United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

ONGNAL74-2526

United States Court of Appeals

For the Second Circuit.

ZOLAR PUBLISHING CO., INC.,
Plaintiff-Appellant,

-against-

DOUBLEDAY & COMPANY, INC., CORONET COMMUNICA-TIONS, INC., and INDEPENDENT NEWS CO., INC., Defendants-Appellees.

Appellant's Appendix

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Attorneys for Defendants
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CIVIL DOCKET UNITED STATES DISTRICT COURT

JUDGE CANNELLA

Jury demand date:

71 CIV. 2061

| C. Form No. 106 Rev. | CASE | · · · · · · · · · · · · · · · · · · · | | | TORNEYS | | • |
|-------------------------------------|--------------|---------------------------------------|---|-------------------------------|-------------------------|---------|----------|
| ZCLAR PUBLISHING CO. INC. AGAINST. | | | For plaintiff: STANLEY M. ESTROW 529 Fifth Avenue, N.Y.C.N.Y. 10017 | | | | |
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| INDEPENDENT NEWS CO. INC. | | | | | .6 | | |
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| | | | For de | efendant: | (Inde | pendent | News Coa |
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| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | | DISB. |
| J.S. 5 mailed | Clerk | | 5-7-71 | S.M. ESTHOW | 15 - | 15 | ===== |
| J.S. 6 mailed . | Marshal | | | | | | |
| Basis of Action: | Docket fee | | | | ·· | | |
| COPTRICHT ACT. 1947 | Witness fees | | | | | + | |
| Action arose at: | Depositions | | | | | 1 | |
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| Inte | FROCFEDING9 | ludgm at 1 |
|----------------|---|------------|
| Hey7-71 | Filed Complaint, Issued Summens, | |
| un.30-7 | Filed stip and order that the time for defts' to answer complaint is ext. from 7-7-71 to 7-28-71. So Ordered; Cannella, J. | |
| Jul 29-71 | Filed ANGUED of Houth and the I | S&6 |
| ug.10-71 | Filed ANSWER of Coronet Cummincations, Inc. to complaint. | S&S |
| mg.10-71 | Filed ANSWER of Independent News Co. Inc. to complaint. | SIS |
| Aug.10-71 | | nswer |
| Ang 10-71 | complaint to 8/11/71. So ordered. Pierce, J. | |
| erReTO-17 | Filed stipulation and order extending deft. Independent News Co.Inc.'s time to answer complaint to 8/11/71. So ordered. Pierce. J. | |
| Sep. 13-7 | 1 Filed pltff's Notice to take deposition of deft. Doubleday & Co., In | c |
| | on 9-29-71 | |
| Sep. 13-7 | 1 Filed pltff's Notice to take deposition of deft. Independent News, | |
| | Co., Inc., on 9-29-71. | |
| | 1 Filed pltff's notice to take deposition of deft. Coronet Communication. on 9-29-71. | lons |
| | l Filed stipulation adjourning examination before trial to 10/1/71. | |
| | Filed defts' Notice to take Deposition of pltff. on 10-15-71, etc. | |
| | Filed Notice of Motion re: Protective Order. (by defts. Coronet and Independent New Filed Memorandum in support of defts motion. | s). |
| | Filed stipulation adjourning motion now ret. 12/9/71 to 1/6/72. | |
| ac.30-71 | Filed affidavit of Bruce hing. | |
| an 10/72 | Filed Affidavit of Bruce king. Filed Deft. Doubleday & Co., Inc. Request to Enter Default. | |
| en 14/7 | 2 Filed Pltffs. Verified Reply to counterclaims of Deft. Doubleday & | |
| 1 00 70 | Co., Inc. | |
| 22-72 22-72 | Filed Report of the Magistrate, Martin D. Jacobs. Filed Reply Affidavit. | |
| r.22-72 | Filed MEMO.END. on motion papers filed 11/11/71. The motion of defendants is gran | |
| | the distribution agreement between the moving defendants dated 3/21/70 not be the | tea, a |
| 4. | subject of discovery at the present time. Pierce J. | |
| er.22-72 | Filed Reply Memorandum in support of motion by defts. Coronet and Independent News | |
| MET 21.1 | Z Filed Dits. Notice to take deposition. | |
| 19-72 | Filed stip & order that examination before trial of pltff is adj. to 4-21-72 at | |
| Jul 24-72 | same time & place-So ordered-McLean, J | |
| ec. 13-73 | Filed Notice to take Deposition upon oral examination of deft. Doubleday & Co.Inc. Filed deft. Doubleday & Co.Inc. affdvt of Robert M. Callagy and notice of motion | - |
| | for an order fer summary judgment. Ret. 12-27-73. | |
| Dec. 17-73 | Filed stip & order adjourning defts' notice of motion for summary judgment to | |
| | 2-1-74 and that pltff's answering papers be served as andicated. | |
| eb 1-74 | So ordered- CANNELLA, J. Filed stip & order adjourning defts' notion of motion for summary judgment to | |
| | 2-11-71, as indicated. So ordered CANNELLA .I. | |
| et . 7-74 | Filed pltff's affdyt. of Bruce King in opposition to motion for summary | |
| | judgment. | |
| Feb. 11-74 | Filed memorandum of law in support of defts motion for summary judgment. | |
| | Filed defts' affdyt. of Robert M. Callagy dated 2-8-74. | |
| eb. 11-74 | Filed deposition of Zolar Publishing Co., Inc. by Bruce T. King dated 3-21-72. Filed deposition of Doubleday & Co., Inc. by Le Paron Barker on 3-9-73. | |
| | | |
| D. 11-/4 | Filed deposition of deft, Coronet Communications, Inc. by Susan acobson on 11-10-71. | |
| eb. 11-76 | Filed continued deposition of Bruce King by deft. Doubleday & Co. Inc. as | |
| 9.71 | Filed memorandum of law in support of defts motion for summary judgment. | |
| 20-7 | Filed pltff's memorandum of law in opposition to defts motion for summary | |
| 7 | Judgment. | |
| | | |

4 2061--ZOLAR PUBLISHING CO., INC.- vs- DOUBLEDAY & COMPANY, INC, et al---- 71 CIV. 20

(PAGE # 3)

| DATE | PROCEEDINGS | |
|-----------|--|--|
| une 6-74 | Filed Reply Memorandum of Law in support of deft's motion for summer Filed pltff's supplemental brief (rec'd in chambers 6-6-7%) Filed memo endorsed on motion filed 12-13-73-The within metion is accordance with the oral decision of the Court of this same date. So conformity therewith, Cannella, J. M/N. | ispesed of |
| • 29-74 √ | Filed Order for final Judgment— that deft's motion for summary judgment is granted and that the Clerk of the Court enter a dismissing the complaint— that the motion of deft. Doubleday for on its counterclaim against thepltff. is denied without prejudic right of said deft, to bring an independent action against the place of stated in its counterclaims in the courts of the State of as indicated. CANNELLA, J. Judgment entered 10-31-74 Clerk. | final judg summary jud a to the tff for the |
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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.

Plaintiff

71 Civ. 2061

-against-

ORDER FOR FINAL JUDGMENT

DOUBLEDAY & COMPANY, INC., CORONET COMMUNICATIONS, INC, and INDEPENDENT NEWS CO., INC.,

Defendants

Defendants, Doubleday & Company, Inc., Coronet
Communications, Inc. and Independent News Co., Inc., having
moved pursuant to Rule 56 of the Federal Rules of Civil
Procedure for:

(a) summary judgment dismissing the complaint upon the grounds that there is no genuine issue as to any material fact and further that the defendants are entitled to judgment as a matter of law; and (b) summary judgment on the counterclaim asserted by defendant Doubleday against the plaintiff permanently enjoining and restraining said plaintiff from further publication, distribution and sale of its ZOLAR'S FAMILY HOROSCOPE and ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS on the grounds that continued publication, distribution and sale of said books infringe rights heretofore granted by plaintiff to defendant Doubleday as a result of which defendant Doubleday has suffered

and continues to suffer irreparable harm, and further that plaintiff account to defendant Doubleday for all profits derived from the sale of the aforementioned books and upon such accounting to pay over to defendant Doubleday such damages as may be determined to be due.

NOW, upon reading and filing the notice of motion dated December 12, 1973 and the affidavits of Robert M. Callagy, sworn to respectively on December 12, 1973 and February 8, 1974 with exhibits annexed thereto, all submitted in support of said motion, and upon the affidavit of Bruce King, sworn to February 5, 1974 with exhibits annexed thereto, submitted in opposition, and this Court having heard Robert M. Callagy, attorney for defendants, Doubleday, Coronet and Independent News, in support of said motion, and Stanley M. Estrow, attorney for the plaintiff in opposition, and due deliberation having been had thereon, and this Court having rendered its decision orally and in writing dated September 16, 1974 which granted defendants' motion for summary judgment dismissing the complaint and denied the motion of defendant Doubleday for summary judgment on its counterclaim against the plaintiff, it is

ORDERED, that defendants' motion for summary judgment

dismissing the complaint in this action be, and the same hereby is granted and that the Clerk of this Court enter a final judgment upon the order herein dismissing the complaint; and it is further

ORDERED, that the motion of defendant Doubleday for summary judgment on its counterclaim against the plaintiff be, and the same hereby is, denied without prejudice to the right of said defendant Doubleday to bring an independent action against the plaintiff for the relief stated in its counterclaims in the courts of the State of New York, and without prejudice to the rights of the plaintiff to bring an independent action in the courts of the State of New York against the defendants Doubleday & Company, Inc., Coronet Communications, Inc. and Independent News Co., Inc. for the relief of an injunction and damages arising out of plaintiff's claims for unfair competition stated in its complaint herein and/or for an accounting of royalties.

Dated: New York, N.Y. October 29, 1974

J.J. M. CARRELLA
U.S.D.J.

Judgment entered 10/31/74
Raymond F. Burghordt
Clerk

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

Plaintiff, :

71 Civ. 2061 (JMC)

-against-

NOTICE OF MOTION FOR SUMMARY JUDGMENT

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC.,

Defendants.

:

SIR:

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert M. Callagy, sworn to December 12, 1973, with exhibits annexed thereto, all the pleadings filed herein including the transcripts of the examinations before trial of the respective parties and upon all other papers and proceedings heretofore had herein; the defendants will move this Court on the 27th day of December, 1973, at 10:00 a.m., or as scon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure (a) granting summary judgment in favor of the defendants dismissing the complaint in this action upon the grounds that there is no genuine issue as to any material fact, and the defendants are entitled to judgment as a matter of law, and (b) granting summary judgment on the counterclaims asserted by the defendant Doubleday against the plaintiff permanently enjoining and restraining said plaintiff from further publication, distribution and sale of its ZOLAR'S FAMILY HOROSCOPE and ZOLAR'S

ENCYCLOPEDIA AND DICTIONARY OF DREAMS on the grounds that continued publication, distribution and sale of said books infringes rights heretofore granted by plaintiff to defendant Doubleday as a result of which defendant Doubleday has suffered and continues to suffer irreparable harm, and further that plaintiff account to defendant Doubleday for all profits derived by it from the sale of the aforementioned books and upon such accounting to pay over to defendant Doubleday such damages as may be determined to be due, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y. December 12, 1973

Yours, etc.,

SATTERLEE & STEPHENS Attorneys for Defendant, DOUBLEDAY & COMPANY, INC.

A Member of the Firm

277 Park Avenue New York, New York 10017 (212) 826-6200

TO: STANLEY M. ESTROW, Esq.
Attorney for Plaintiff
529 Fifth Avenue
New York, New York 10017
(212) 986-9345)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

: 71 Civ. 2061 (JMC)

-against-

AFFIDAVIT IN SUPPORT

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC., OF MOTION FOR SUMMARY JUDGMENT

., INC.,

Plaintiff,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ROBERT M. CALLAGY, being duly sworn, deposes and says:

- l. I am a member of the firm of Satterlee & Stephens, attorneys for the defendants, Doubleday & Company, Inc. ("Doubleday"), Coronet Communications, Inc. ("Coronet") and Independent. News Company, Inc. ("Independent"), in this litigation. I am fully familiar with all prior proceedings in this action and the facts stated herein and I make this affidavit in support of defendants' motion for summary judgment dismissing the complaint and granting judgment on the counterclaims of defendant Doubleday permanently enjoining plaintiff from infringing rights previously granted by it to defendant Doubleday and for an accounting and damages.
- 2. Briefly stated, the history of this action is as tollows:

Plaintiff instituted this action on June 17, 1971.

The complaint, a copy of which is annexed hereto as Exhibit A, pleads three causes of action: The first which is against Doubleday claims that the rights plaintiff granted to Doubleday permitted publication of ZOLAR'S FAMILY HOROSCOPE only for the year 1964. The second cause of action against Doubleday, the paperback publisher, Coronet, and its distributor, Independent, claims infringement of the rights granted in ZOLAR'S FAMILY HOROSCOPE by reason of the subsequent reprinting and sale of said work by Coronet and Independent. The third cause of action against all defendants claims that paperback rights to ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS were reverted by Doubleday to the plaintiff and therefore the subsequent reprinting and sale of said work by Coronet and Independent amounts to infringement.

Defendants' answers, copies of which are annexed hereto as Exhibits B, C and D respectively, deny generally the allegations of the complaint and by way of counterclaim Doubleday has alleged that by reason of plaintiff's grant of full rights to publish ZOLAR'S FAMILY HOROSCOPE not just for one year but for the entire term (27 years) of the copyright and any renewal period, plaintiff should be permanently enjoined from further publication and sale of its competing ZOLAR'S FAMILY HOROSCOPE (plaintiff has admitted publication and sale of a competing ZOLAR'S FAMILY HOROSCOPE in the years 1966 through 1971 (complaint para. NINTH)) and required to account to Doubleday and pay over the damages sustained by reason of such infringement.

With respect to ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, Doubleday by way of counterclaim has alleged that plaintiff granted it full rights in this title also for the entire term

(27 years) of the copyright, and any renewal period, that the paperback rights have not reverted to plaintiff, and that plaintiff should be permanently enjoined from further publication and sale of its paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS (plaintiff has admitted publication and sale of a competing paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS [complaint para. THIRTY-EIGHTH]) and also be required to account to Doubleday and pay the latter the damages it may have sustained by reason of such infringement.

3. ZOLAR'S FAMILY HOROSCOPE

On or about March 22, 1963 Doubleday entered into a publishing agreement with plaintiff (a copy of the publishing agreement dated March 22, 1963 is annexed hereto as Exhibit E) under the terms of which plaintiff granted to Doubleday the exclusive right for the full term of the copyright to print, publish, copy and vend a work entitled, ZOLAR'S FAMILY HOROSCOPE (a copy of the Doubleday edition bearing the description "A Dolphin Original, C433" will be handed up to the Court on the argument of the motion). The Doubleday Dolphin edition was first published on November 1, 1963.

- 4. As stated above, the basis of plaintiff's first two causes of action is a claim that the rights granted to Doubleday in ZOLAR'S FAMILY HOROSCOPE were only granted for the year 1964.
- 5. Nowhere in the publishing agreement (Exhibit E) is it specified or in any way implied that the rights granted to Doubleday were limited to the year 1964. In fact, the contrary is specified. Paragraph 2 of the publishing agreement (Exhibit E) provides in relevant part:

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"The Author grants and assigns to the Publisher the exclusive right to print, publish, copy and vend the work and the other rights hereinafter referred to on the terms set forth, throughout the world."

Paragraph 3 of the publishing agreement provides in relevant part:

"The Publisher is hereby expressly authorized and agrees to take out copyright in the name of Zolar Publishing Company, Inc. and to take all steps required to secure said copyright in the United States and is authorized in its discretion to tak out copyright in such other countries as may be vered by this agreement. The Author agrees to apply for the renewal of said copyright on the expiration of the first term thereof, and authorizes the Publisher to make such application in his name. The Author further agrees to assign to the Publisher, if this agreement has not terminated previously, the sole and exclusive right to print, publish, copy and vend the work, and the other rights referred to hereinafter, during the full term of said renewal, on the same terms and conditions as for the original copyright term."

- 6. During the examinations before trial, plaintiff admitted review (King, tr. p. 123) / and execution (King, tr. p. 121) of the publishing agreement (Exhibit E), which was the same form of publishing agreement as one it had previously entered into with Doubleday covering ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS (King, tr. p. 127).
- 7. Thus, plaintiff was fully familiar with the terms of the publishing agreement (Exhibit E) and the fact that the rights granted to Doubleday were not just for one year as it claims but rather for the full term of the copyright and any renewal thereof. This conclusion is further supported by the following testimony

^{1/} Transcript of testimony given by plaintiff's President, Bruce King, hereinafter referred to as King tr.

given by plaintiff's President during the examination before trial:

Question: '
(By defendants' attorney)

Do you know what the period...of the copyright term is in the U.S.?

Answer:
(By Bruce King, President of plaintiff)

Twenty-seven years.

Question:

t.

Did you know this at the time that you entered into these agreements early in 1963?

Answer:

Well, I was under the opinion that I had the copyright for 27 years, not Doubleday, I was the author and I had the 27-year copyright.

Question:

How long have you been in the publishing business?

Answer:

I have been in this business for 40 years. That's the first book I ever sold, was the "Dream" book.

Question:

About how long have you known what the term of a copyright --

Answer:

About a year or two after I had the Doubleday contract. When I negotiated with some other publishers I got a much better contract I belong to the Author's Guild and they frown on the contracts that I signed with Doubleday.

Question:

Could you give me approximately what year it was in which you learned what the copyright term is?

Answer:

Well, I always knew what the copyright term was but I am always under the opinion that the author had the copyright, not the publisher.

Question:

When you say you always knew, you mean since enturing the publishing business?

Answer:

Since the day I was born I knew that 27 years. That's one of the first things my mother told me, was if I became an author that 27 years the government—I'd have a copyright.

(King, tr. pp. 129-131)

Question:

(By defendants' attorney)

I'd like to ask you, Mr. King, whether or not when you received this contract you had any discussions with Miss Rathbun (former Doubleday employee). . .

Answer:

(By Bruce King, President of plaintiff)

Yes. I told her that this was a year book and a new book was published every year and therefore the contract should be for one year only and I put it right down there I wanted a contract for one year and I presumed that's what I got, but I guess now. . .

MR. ESTROW: Please don't volunteer information.

Question:

Do you know how long this contract was for that you signed with Doubleday?

Answer:

No.

Question:

Did you ask Miss Rathbun about it?

Answer:

No.

Question:

Did you have any conversations with Miss Rathbun?

Answer:

We never discussed the contract after I got it.

(King, tr. pp. 126-127)

Question:
(By defendants' attorney)

I'd like to call your attention to paragraph 3 of Defendant's Exhibit PP (Agreement, Exhibit E). Could you read that paragraph and tell me whether or not you recall having looked over that paragraph when you received it?

Answer:

(By Bruce King, President of plaintiff)

Paragraph 3?

Question:

Yes -- when you received it originally.

Answer:

It's there; I don't particularly remember any part of the contract because I don't have that kind of a memory.

Question:

What is there that you are referring to?

Answer:

No, I mean it's just a contract as far as I'm concerned, I don't see anything in there that's unusual.

Question:

I'd like to read --

Answer:

This is a form contract, it's printed and I suppose Doubleday sends it to anybody that will sign it. That was the first time i ever sold the book so I must have signed a contract, which today doesn't exist any more because all contracts I have ever signed since then have a stipulated year and many things that are in favor of the author, instead of this; this is all in favor of the publisher.

(King, tr. pp. 123, 124)

8. In an attempt to avoid the terms and provisions of the publishing agreement (Exhibit E) which clearly specify the rights granted Doubleday and contain no limitation of the type now claimed by plaintiff, plaintiff argued during discovery that the appearance of the imprint "1964 Edition" on the copyright page of Doubleday's Dolphin Edition signifies that Doubleday's ZOLAR'S FAMILY HOROSCOPE was only for use in the year 1964. (A copy of the cover and copyright page of Doubleday's Dolphin Edition of ZOLAR'S FAMILY HOROSCOPE is annexed hereto as Exhibit F.) No such significance attaches to the imprint "1964 Edition". As stated in the testimony of Coronet's Assistant to the President,

Susan Jacobson. 2/ "The imprint '1964 Edition' means to me that this particular copy of the book was printed in 1964". (Jacobson, tr. p. 39).

- 9. By agreement dated May 15, 1970, copy of which is annexed hereto as Exhibit G, Doubleday licensed the paperback (reprint) rights in ZOLAR'S FAMILY HOROSCOPE to Paperback Library, Inc., a subsidiary of Coronet. This licensing agreement was entered into in accordance with the rights previously granted by plaintiff to Doubleday under the publishing agreement (Exhibit E), specifically paragraph 9 thereof:
 - The Author (plaintiff) hereby grants and assigns to the Publisher (Doubleday) the sole and exclusive right to sell to other publishers, including any corporation which is a subsidiary or affiliate of the Publisher's, the right to bring out a reprint edition of the work (in full length, condensed or abridged versions), which sale shall provide that such reprints shall not appear on the market within one year after the date of trade publication. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales. The Publisher also has the right to publish a reprint edition of the work through its reprint divisions, and in the event a reprint edition is thus published through said reprint divisions, the Publisher shall pay to the Author one-half the amount which the reprint divisions shall credit to the Publisher on the books of account of the reprint divisions."

Paperback Library, Inc., Coronet's subsidiary, published the paperback edition of ZOLAR'S FAMILY HOROSCOPE in September 1970.

10. From the above, it is clear that Doubleday, Coronet and Independent had full and exclusive rights to publish, dis-

^{2/ (}Miss Jacobson had been employed by the Coronet subsidiary Paperback Library for more than nine years (Jacobson, tr. p. 5) and had held various positions at Coronet including Managing Editor (Jacobson, tr. p. 5); she was in charge of the acquisition of paperback rights from hardcover publishers and personally participated in the acquisition from Doubleday of the rights to reprint ZOLAR'S FAMILY HOROSCOPE (Jacobson, tr. p. 17).

tribute and sell paperback editions of ZOLAR'S FAMILY HOROSCOPE during the entire copyright term and any renewal thereof. Plaintiff has admitted publication of a competing ZOLAR'S FAMILY HOROSCOPE during the years beginning in 1966, thereby violating and infringing the rights which it granted to Doubleday and by reason of such infringement Doubleday is entitled to an injunction restraining plaintiff from further publication, distribution and sale of its competing work entitled ZOLAR'S FAMILY HOROSCOPE. Plaintiff, therefore, should be required to account to Doubleday for the publication, distribution and sale of such competing work during the years commencing in 1966 and to pay over to Doubleday the damages which it has sustained by reason of such infringement.

11. ENCYCLOPEDIA AND DICTIONARY OF DREAMS

By agreement dated January 21, 1963 (a copy of which is annexed hereto as Exhibit H) plaintiff granted to Doubleday full and exclusive rights to print, publish, copy and sell a work entitled ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS. Plaintiff has admitted negotiating (King, tr. pp. 6, 7, 9, 12), reviewing prior to signing (Kirg, tr. pp. 25, 26) and executing (King, tr. p. 11) the publishing agreement. Plaintiff has also admitted that at the time it executed the publishing agreement, its President knew that plaintiff was selling full publication rights, including, but not limited to, hardcover and paperback and reprint rights (King, tr. p. 16). Doubleday published its hardcover edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS on November 1, 1963.

12. By letter agreement dated April 9, 1965 executed by the plaintiff (a copy of which is annexed hereto as Exhibit I), the publishing agreement covering this work (Exhibit H) was modified to

the extent that Doubleday granted back to the plaintiff the right to publish a hardcover edition of the work. All other rights which had been granted to Doubleday under the publishing agreement (Exhibit H) remained in full force and effect under the modification agreement (Exhibit H) which specifically included plaintiff's grant to Doubleday of reprint (paperback) rights, as follows:

- "2. All other rights granted to us under the agreement of January 21, 1963 for the publication of the above Work, remain in our sole and exclusive possession."
- "4. If, however, within six (6) months from date of this letter, we have made no sale of the reprint rights to the Work in the United States, Canada and the Philippine Islands; territory other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language, you may then request that such rights be reverted to you, at which time we will consider your request."

 (Emphasis added)

while plaintiff claims that the aforementioned modification agreement automatically reverts the paperback rights to plaintiff, if no sale had been made by Doubleday within six months from the date thereof, its claim directly contradicts the clear language of the modification agreement. Paragraph 4 simply states that after the expiration of six months from the date of the modification agreement, plaintiff can request to have the paperback rights reverted and Doubleday agrees to consider the request. Under no circumstances can this language be said to create an automatic reversion of paperback rights to the plaintiff. All the language states is that Doubleday will agree to consider a request. While plaintiff may claim to have made such a request, the fact is that it has never been granted by Doubleday.

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- 13. By agreement dated April 24, 1969 (a copy of which is annexed hereto as Exhibit J), Doubleday licensed the paperback reprint rights in ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS to Paperback Library, Inc., a subsidiary of Coronet. This licensing agreement was entered into in accordance with the rights previously granted by plaintiff to Doubleday under the provisions of the publishing agreement (Exhibit G), specifically paragraph 9 thereof. Paperback Library, Inc. published the paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS on April 29, 1969.
- 14. It is obvious that the modification agreement dated April 9, 1965 (Exhibit I) does not have the effect of reverting the paperback rights to the plaintiff and therefore plaintiff's third cause of action is totally without merit. Furthermore, plaintiff's publication of a soft cover paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, which it has admitted in paragraph THIRTY-EIGHTH of its answer, is in direct violation of the terms of its publishing agreement with Doubleday (Exhibit G), as modified, and Doubleday notified plaintiff to cease and desist (see letter from Doubleday to Bruce King dated March 26, 1970, a copy of which is annexed hereto as Exhibit K). As a matter of law, defendants are entitled to judgment dismissing this cause of action on the grounds there is no basis for the claim and no triable issue of fact, and Doubleday is entitled to judgment against the plaintiff on its counterclaim for an injunction and damages.
 - 15. By reason of the foregoing, I respectfully request that summary judgment be granted dismissing the complaint in its entirety, and that judgment be granted in favor of Doubleday on

counterclaims against the plaintiff for all relief requested therein.

Robert M. Callagy

Sworn to before me this

12th day of December, 1973.

Notary Public

MARY A. TARANTINO
No.ery Pure c. North of RewYork
No. 30-09 20-00
Qualified in Lassau County
Certificate Face in fixey tork County
Commission expires March 30, 1975

A

GRATED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

Plaintiff, :

-against-

DOUBLEDAY & COMPANY INC., and COROLLET COMMUNICATIONS INC., and INDEPENDENT NEWS CO., INC.,

VERIFIED COMPLAINT

Defendants.

PLAINTIFF by STANLEY M. ESTROW, ESQ., its attorney complaining of the defendants herein alleges:

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mentioned the plaintiff was and is a corporation incorporated under the laws of the State of New York, having its principal place of business in the Borough of Manhattan, City and State of New York, which is within the jurisdiction of the United States District Court for the Southern District of New York. The matter in controversy exclusive of interest and costs, exceeds the sum of \$10,000.00, and is brought under Title 17 U.S.C.A., Section 1 and 101 also known as Federal Copyright Act of 1947, as hereinafter more fully appears.

SECO.ID: Prior to March 22, 1963 the plaintiff caused to be created an original book entitled, "ZOLAR's FAMILY HOROSCOPE", 1964 Edition.

THIRD: This book contains a large amount of material wholly original with plaintiff and is copyrightable

rations rat syntatus man man Laurence and the laws of the United States. Between lauren 22, 1963 and the 2nd day of February, 1964, plaintiff couplied in all respects with the Act of 1947, and all other laus governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book and received from the Registrar all copyrights, a Certificate of Registration from the Library of Congress, Catalogue 30.: 63-20518.

FOUNTH: That on or about March 22, 1963 the plaintiff entered into an agreement with the defendant community a company, INC., of Garden City, New York, under which the plaintiff issued a license to print, bind, and sell said work in strict conformity with the provisions of the Act of 1947, and all other laws governing copyright.

FIFTH: That said book entitled, "ZOLAR's CAMILY HOROCCOPE" was keyed to and adapted solely to the year 1954 and intended for sale and distribution during said year.

SINTH: That the defendant DOUBLEDAY & COMPANY

1.1C., caused said work to be published in a pocket size

1.oft-cover book edition under the descriptive dealgnation of

SEVERTH: That the defendant DOUBLEDAY & COMPANY INC., in arranging for the production publishing and sale of said edition, with knowledge that it was keyed to and intended for sale and distribution only for the year 1954 caused to be imprinted on page 4 thereof the following:

"The Dolphin books edition is the first publication of POLAR's FAMILY HOROSCOPE - 1964 Edition"

1.

EICHEN: That after the publication and distribution of said 1964 Edition of ZOLAR'S FAMILY HOROSCOPE" 1954 Edition by the defendant DOUBLEDAY & COMPANY INC., the plaintiff and the defendant discontinued any further relationship between the parties with respect to subsequent yearly editions of ZOLAR'S FAMILY HOROSCOPE.

NINTH: That subsequent to the 1964 Edition of ZOLAR'S FAMILY HOROSCOPE, which was published by the defendant DOUBLEDAY & COMPANY LAC., as aforesaid, the plaintiff erranged for and did produce and publish and offer for sale to the general public subsequent editions of ZOLAR'S FAMILY HOROSCOPE keyed to the specific years involved and published such annual editions for the years 1966, 1967, 1968, 1969, 1970 and 1971, under the continuing title of ZOLAR'S FAMILY HOROSCOPE.

TENTH: Since March 22, 1963 the plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the Copyright in said ZOLAR's FAMILY HOROSCOPE, 1964 Edition.

ELEVENTE: After May 13, 1970 the defendant DOUBLEDAY, caused copies of said 1964 Edition of ZOLAR's FAMILY HOROSCOPE to be placed upon the market as a new edition bearing the title of "ZOLAR's FAMILY HOROSCOPE" which was copied entirely from plaintiff's copyrighted book entitled, "ZOLAR's FAMILY HOROSCOPE", 1964 Edition, except that said Edition failed to show that it was a 1964 Edition and by eliminating therefrom certain sections pertaining to the year 1964.

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TWELFTH: Plaintiff has notified defendant FOUBLEDAY & COMPANY INC., that it has infringed the plaintiff's Copyright, and said defendant continues to infringe the Copyright.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS, DOUBLEDAY & COMPANY INC., CORONET COMMUNICATIONS INC., AND INDEPENDENT NEWS COMPANY INC.

THIRTEENTH: Plaintiff repeats and realleges
paragraphs "FIRST through TWELFTH", with the same force
and effect as set forth at length herein.

FOURTEENTH: That at all times hereinafter mentioned the defendant CORONET COMMUNICATIONS INC., was and it is, upon information and belief, a New York corporation which publishes a series of soft cover books under the Trade Name of Paperback Library.

FIFTEENTH: That the defendant INDEPENDENT NEWS
COMPANY INC., is a New York corporation having its principal
place of business in the State of New York and that said
company is engaged in the business of acting as a national
distributor of magazines and books including the series under
the name of Paperback Library for the defendant CORONET
COMMUNICATIONS INC.

SIXTEENTH: That heretofore and on or about the 24th day of April, 1969, the defendant DOUBLEDAY & COMPANY INC., entered into an agreement with the defendant CORONET COMMUNICATIONS INC., pursuant to which DOUBLEDAY & COMPANY INC., purported to issue a license to the defendant CORONET COMMUNICATIONS INC., for the re-publication and reissue of

"ECHAR'S FAMILY MOROSCOPE", 1984 Edition.

SEVENTEURTH: That at April 24, 1969 the defendant DOUBLEDAY & COMPANY INC., possessed no rights in and to the Copyright on the 1964 Edition of ZOLAR's FAMILY IOROSCOPE" and possessed no license to publish, and any agreement entered into by it with the defendant CORONET COMMUNICATIONS INC., conveyed no valid or authorized rights to re-publish such edition.

ENTIRENTH: That the defendant CORONET COMMUNI-CATIONS INC., after arranging the right to reprint said 1964 Edition of ZOLAR's FAMILY HOROSCOPE, upon information and belief, entered into a contract with, or had outstanding a contract with the INDEPENDENT NEWS COMPANY INC., for the distribution of said edition and when published, caused said edition to be issued and offered to the reading and buying public in the United States of America and at various and different foreign sales points.

MINETEENTH: That in or about the month of October, 1970 the plaintiff, in continuation of its publishing program, caused to be printed, published and distributed the 1971 Edition of "ZOLAR's FAMILY HOROSCOPE" and caused the same to be placed on sale in practically the identical distribution points, news stands and retail outlets to which the edition published by CORONET COMMUNICATIONS IRC., was shipped for sale purposes.

TWENTIETH: That there is now and has been offered for sale to the buying public the 1971 Edition of ZOLAR's FAMILY HOROSCOPE" published by plaintiff together with

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politioned by the defendant CORONET CONTUNICATIONS INC., mided and abetted by the defendant, DOUBLEDAY & COMPANY INC., and distributed in competition with plaintiff's 1971 Edition of Zalat's FAMILY HOROSCOPE by the defendant INDEPENDENT NEWS COMPANY INC.

THENTY-OME: That plaintiff has notified the defendents and each of them that they have infringed the Copyright of he plaintiff, and that they continue to infringe such Copyright.

Continuously thereafter the defendants have been publishing, distributing, selling and otherwise marketing the book entitled "TOLAR's FAMILY HOROGOPE" and have created confusion on the part of the purchaser, and have caused and will cause a dimunition in value and possible destruction of the possible obstruction of the possibility owned by plaintiff where any purchaser intended to buy the 1971 Edition of ZOLAR's FAMILY HOROGOPE, and was caused to purchase the defendants' reprint prepared for use in 1934, and which was produced and sold in competition with the 1971 Edition published by plaintiff.

THEMTY-FOUR: The defendants and each of them have thereby engaged in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

AND FOR A THIRD CAUSE OF AND CONTROL TO LATERWAYS WITH LEBAY & CAPARY THE., CHOOSE CONTROL CATIONS INC., AND HEEPER AND THIS COMPANY INC.

TANNAY-FIVE: Plaintiff repeats and realloges
paragraphs "FIRST", "FOURTEFATH" and "FIFTEEATH" with the
same force and effect as set forth at length herein.

TWENTY-SIX: Prior to January 21, 1963 the plaintiff caused to be created an original book entitled "ZOLAR's OFFICIAL DREAM DIGHTONARY AND ENCYCLOPEDIA."

TWEFTY-SEVEN: This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

TWENTY-ELGHT: After January 21, 1963 plaintiff

complied in all respects with the Act of 1947, and all other

laws governing Copyright and secured the exclusive rights

and privileges in and to the Copyright of said book and

received from the Registrar of Copyrights a Certificate of

Registration, Library of Congress, Catalogue Card No.: 63-210717.

Therry-blue: That on or about January 21, 1963
the plaintiff entered into an agreement with the defendant
DOUBLEDAY & COMPANY INC., of Garden City, New York under which
the plaintiff issued a license to print, bind and publish
said work both in hard cover and soft cover, in strict conformity with the provisions of the Act of 1947, and all other
laws governing Copyright.

THIRTY: That the defendant DOUBLEDAY & COMPANY

Theorem in 1963.

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THE TY-OFE: That thereafter and on or about that 10, 1905 the defendant BOUBLEAY & COMPANY INC.

Telegraded all rights under the contract of January 21, 1963 with respect to the future publishing or production of TOLAR'S ELCYCLOPEDIA AND DICTIONARY OF DREAMS" hard cover thation, which rights reverted to and become the sole and exclusive property of the plaintiff herein.

THIRTY-TWO: That in pursuance of the release by the defendant DOUBLEDAY & COMPANY INC., as aforesaid, the plaintiff purchased all of the unsold hard cover copies and printed sheets from the defendant DOUBLEDAY & COMPANY INC.

THURTY-THREE: That under date of April 9, 1965

the defendant DOUBLEDAY & COMPANY INC., entered into an agreement with the plaintiff herein to extend and limit the time within which said defendant could arrange for foreign reprint rights to a period of six months from the date thereof.

October 25, 1965 the defendant and the plaintiff herein terminated any further rights possessed by the defendant boubleDAY & COMPANY INC., pursuant to the extension agreement of April 9, 1965.

THIRTY-FIVE: That on or about April 24, 1969, the defendant DOUBLEDAY & COMPANY INC. in breach and violation of the plaintiff's rights, entered into an agreement with the defendant Paperback Library Inc., for the production, sale and distribution of a reprint Edition of "ZOLAR's ENCYCLOPEDIA AND DICTIONARY OF DREAMS", all without the consont or approval of the plaintiff hereim.

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THE TY-SIN: That upon information and belief said beforedant Paperback Library Inc., considered a reprint Edition of "ZOLAR's ENCYCLOPEDIA AND DICTIONARY OF DREAMS" designated as Occult Book 66-209 to be published and distributed for sale throughout the United States, Canada, the Philippines, the British Commonwealth and the free State of Ireland which Edition as published and placed on sale by said Paperback Library Inc., in October of 1959.

THIRTY-SEVEN: That the distribution of the Edition of "ZOLAR's ENTYCLOPEDIA AND DICTIONARY OF DREAMS" published by the defendant Paperback Library Inc., was distributed nationally and internationally by the INDEPENDENT NEWS COMPANY INC.

THINTY-EIGHT: That without knowledge or warning sither from the defendant DOUBLEDAY & COMPANY INC., or Paperback Library Inc., that they intended to publish and distribute "ZOLAR' ENCYCLOPEDIA AND DICTIONARY OF DREAMS" the plaintiff entered upon the production of a soft cover Edition of "ZOLAR's ENCYCLOPEDIA AND DICTIONARY OF DREAMS", and caused the same to be published and widely circulated, and offered for sale through the same book stores and outlets as the unauthorized Edition published by the defendant Paperback Library Inc., under the invalid license and contract between it and DOUBLEDAY & COMPANY INC.

THIRTY-NINE: That by reason of the acts of the defendants as aforesaid, there are two "ZOLAR's ENCYCLOPEDIA AND DICTIONARY OF DREAMS" being offered to the buying public, the original and authorized Edition published by the plaintiff at a retail price of \$2.95 competing with the unauthorized Paperback

Edition published and distributed by the defendants having a retail price of \$1.25.

FORTY: That the plaintiff has notified the defendants and each of them that they have infringed the plaintiff's Copyright, and that they continue to infringe such Copyright.

Continuously thereafter the defendants have been publishing, distributing, selling and otherwise marketing a paperback book entitled, "ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS", and have created confusion on the part of the purchaser and have caused and will cause a dimunition in value, and the destruction of goodwill, in that any purchaser intending to buy the authorized Edition of "ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS" offered for sale by the plaintiff at \$2.95, will purchase the defendant's Edition at \$1.25 produced in competition with that of the plaintiff.

FORTY-TWO: The defendants and each of them have thereby engaged in unfair trade practices and unfair competition against plaintiff to plaintiff's irreparable damage.

WHEREFORE, plaintiff demands:

- (1) That defendants, their agents and servants be enjoined permanently from infringing the Copyright of said plaintiff in any manner, and from publishing, selling marketing or otherwise disposing of any copies of the book "ZOLAR's FAMILY HOROSCOPE".
- (2) That the defendants and each of them be required to pay to plaintiff such damages as plaintiff has . sustained in consequence of defendants' infringement of said

Compright and said unfair trade practices, and unfair competition and account for:

(a) All gains, profits, and advantages derived by defendants by said trade practices and unfair competition, and

(b) All gains, profits and advantages derived by the defendants and advantages

- (b) All gains, profits and advantages derived by the defendants and each of them by reason of their infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the Copyright Statute.
- (3) That defendant be required to deliver during the pendency of this action all copies of said book entitled, "ZOLAR's FAMILY HOROSCOPE" Paperback Library Edition in their possession or under their control and to deliver up for destruction all infringed copies and all plates, moulds and other matter for making such infringing copies.
- (4) That defendants, their agents and servants be enjoined permanently from infringing the Copyright of said plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any copies of the book "ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS".
- (5) That the defendant and each of them be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendants' infringement of said Copyright and said unfair trade practices, and unfair competition and account for:
 - (a) All gains, profits, and advantages derived by descendants by said unde practices and unfair consettion, and
 - (b) All gains, profits and advantages derived by the defendants and each

of them by reason of their infringement of plaintiff's Copyright or such damages as to the Court shall appear proper within the provisions of the Copyright Statute.

- (6) That defendants be required to deliver, during the pendency of this action all copies of said book entitled "ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS" in their possession or under their control and to deliver up for destruction all infringed copies and all plates, moulds and other matter for making such infringed copies.
- (7) That defendants pay to plaintiff the cost of this action and reasonable attorney's fees due and allowed to plaintiff by the Court.
- (8) That plaintiff have such other and further relief as is just.

That plaintiff have such other and further relief

as is just.

STANLEY H. ESTROW

Attorney for Plaintiff

129 Fifth Avenue

How York, New York 10017

Tel. No.: 935-9345

STATE OF NEW YORK)

: ss.:
COUNTY OF NEW YORK)

BRUCE KING, being duly sworn, deposes and says that deponent is the President of ZOLAR PUBLISHING CO.

INC., the corporation named in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because ZOLAR PUBLISHING CO., INC., is a New York corporation. Deponent is an officer thereof, to-wit, its President. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Personal conversation with the defendants' correspondence, and corporate records.

BRUCE KING

Sworn to before me, this ? (/

day of April, 1971

Committed 3/2/73

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ZOLAR PUBLISHING CO., INC.,

Plaintiff, : 71 Civ. 2061

-against- : VERIFIED ANSWER

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC.,

Defendants.

Defendant, Doubleday & Company, Inc. ("Doubleday"), by its attorneys, Satterlee & Stephens, for its answer to the complaint, alleges upon information and belief:

- under Title 17 U.S.C.A.§§1 and 101 (Federal Copyright Act of 1947), but denies all other allegations contained in paragraph FIRST, except that it alleges that it is without knowledge or information sufficient to form a belief with respect to the truth of the allegations that plaintiff is a New York corporation having its principal place of business in the Borough of Manhattan, City and State of New York.
- 2. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph SECOND.
- 3. Denies each and every allegation contained in paragraphs THIRD and FOURTH, except admits that on or about March 22, 1963 said defendant entered into an agreement with plaintiff and begs leave to refer to a copy of said agreement for a correct statement of the terms thereof. (A true copy of

said agreement dated March 22, 1963 is annexed hereto as .

Exhibit A.) Pursuant to the terms of said agreement dated

March 22, 1963 and more specifically paragraph 3 thereof, said

defendant was authorized to and did take out copyright in the

name of plaintiff. The work was registered in the Library of

Congress and assigned Catalogue Card Number 63-20518.

- Defendant denies each and every allegation contained in paragraph FIFTH.
- 5. Defendant denies each and every allegation contained in paragraph SEVENTH, except admits that its Dolphin paperback edition of ZOLAR'S FAMILY HOROSCOPE contained the following legend on page 4 thereof:

The Dolphin Books Edition is the first publication of ZOLAR'S FAMILY HOROSCOPE
1964 Edition

- Denies each and every allegation contained in paragraph EIGHTH.
- 7. Denies each and every allegation contained in paragraph NINTH, except denies knowledge or information sufficient to form a belief with respect to the truth of the allegations that plaintiff arranged for and did produce and publish and offer for sale to the general public subsequent editions of ZOLAR'S FAMILY HOROSCOPE keyed to the specific years involved and published such annual editions for the years 1966, 1967, 1968, 1969, 1970 and 1971 under the continuing title of ZOLAR'S FAMILY HOROSCOPE.
- 8. Defendant denies each and every allegation contained in paragraph TENTH, except admits that pursuant to the agreement of March 22, 1963, said defendant took out copyright

for the work ZOLAR'S FAMILY HOROSCOPE in the name of plaintiff and that such copyright was and has at all times since been subject to the rights granted and assigned to Doubleday under the agreement of March 22, 1963.

- 9. Defendant denies each and every allegation contained in paragraph ELEVENTH, except it admits that pursuant to the terms of its agreement with plaintiff dated March 22, 1963, said defendant on or about May 15, 1971 entered into an agreement with Paperback Library, Inc. ("Paperback Library") authorizing and assigning to Paperback Library the paperback reprint rights for the book ZOLAR'S FAMILY HOROSCOPE.
- 10. Defendant denies each and every allegation contained in paragraph TWELFTH, except it admits that on or about September 24, 1970 plaintiff's attorney wrote a letter to said defendant in which he raised the alleged claim of copyright infringement.
- 11. With respect to paragraph THIRTEENTH, defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs FIRST through TWELFTH, inclusive, with the same force and effect as if fully set forth herein.
- 12. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs FOURTEENTH, FIFTEENTH, EIGHTEENTH and NINETEENTH.
- 13. Defendant denies each and every allegation contained in paragraphs SIXTEENTH and SEVENTEENTH, except it admits that pursuant to the terms of its agreement with plaintiff dated March 22, 1963, said defendant on or about May 15, 1970 entered

into an agreement with Paperback Library authorizing and assigning to Paperback Library the paperback reprint rights for the book entitled ZOLAR'S FAMILY HOROSCOPE.

- 14. Defendant denies each and every allegation contained in paragraphs TWENTIETH, TWENTY-THREE and TWENTY-FOUR, except that it denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in said paragraphs insofar as they refer to the other defendants.
- 15. With respect to paragraph TWENTY-ONE, defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraph TWELFTH with the same force and effect as if fully set forth herein and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in such paragraph insofar as they relate to the other defendants.
- 16. With respect to paragraph TWENTY-FIVE, defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs FIRST, FOURTEENTH and FIFTEENTH with the same force and effect as if fully set forth herein.
- 17. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs TWENTY-SIX and TWENTY-SEVEN.
- 18. Defendant denies each and every allegation contained in paragraphs TWENTY-EIGHT and TWENTY-NINE, except admits that on or about January 21, 1963 said defendant entered into an agreement with plaintiff and begs leave to refer to a copy of said agreement for a correct statement of the terms thereof.

(A true copy of said agreement dated January 21, 1963 is annexed hereto as Exhibit B.) Pursuant to said agreement, said defendant took out copyright in the name of plaintiff for ZOLAR'S ENCYCLO-PEDIA AND DICTIONARY OF DREAMS. Said work was registered in the Library of Congress and assigned Catalogue No. 63-21071.

19. Defendant denies each and every allegation contained in paragraphs THIRTY, THIRTY-ONE, THIRTY-TWO, THIRTY-THREE and THIRTY-FOUR, except it admits that

(a) it published a hardcover edition of the work in the English language on or about November 1, 1963;

(b) on or about April 9, 1965, said defendant and plaintiff entered into a letter agreement which modified certain of the terms of the agreement between said parties dated January 21, 1963 (Exhibit B). Defendant begs leave to refer to a copy of said letter agreement for a correct statement of the terms thereof. (A true copy of said letter agreement dated April 9, 1965 is annexed hereto as Exhibit C.) Pursuant to the terms of said letter agreement, said defendant granted to plaintiff a restricted right to publish a hardcover edition of the work in the English language provided nevertheless that all other rights (including reprint rights) were to remain defendant's. All unsold hardcover copies of the work which had been published by said defendant were sold to plaintiff as an accommodation.

20. Defendant denies each and every allegation contained in paragraph THIRTY-FIVE, except admits that on or about April 24, 1969 Doubleday entered into an agreement with Paperback Library for the right to reprint ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS.

21. Defendant denies knowledge or information suffi-

cient to form a belief with respect to the truth of the allegations contained in paragraphs THIRTY-SIX and THIRTY-SEVEN.

- . 22. Defendant denies each and every allegation contained in paragraphs THIRTY-EIGHT, THIRTY-NINE, FORTY-ONE and FORTY-TWO, except that it denies knowledge or information sufficient to form a belief with respect to plaintiff's production and sale of a soft cover edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS and the allegations in said paragraphs insofar as they relate to the other defendants.
- 23. Defendant denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph FORTY insofar as they relate to the other defendants, except admits that on or about September 24, 1970 plaintiff's attorney wrote a letter to said defendant in which he raised the alleged claim of copyright infringement.

AS AND FOR AN AFFIRMATIVE DEFENSE

24. The complaint fails to state a claim against the defendant Doubleday upon which relief can be granted.

AS AND FOR A FIRST COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANT DOUBLEDAY ALLEGES:

25. On or about March 22, 1963 Doubleday & Company Inc. ("Doubleday") entered into an agreement in writing with Zolar Publishing Co., Inc. ("Zolar") under the terms of which Zolar agreed to deliver to Doubleday two copies of a work entitled ZOLAR'S FAMILY HOROSCOPE. (A true copy of said agreement is annexed as Exhibit A to this answer.) Pursuant to the terms of said agreement and more particularly paragraph 2 thereof, Zolar "granted and assigned to Doubleday the exclusive right to

print, publish, copy and vend the work" for the duration of the original copyright term and any renewal term. Said agreement has been and still is in full force and effect without any amendments, changes or modifications.

- agreement with Doubleday and after Doubleday published ZOLAR'S FAMILY HOROSCOPE and commenced distribution and sale, Zolar caused to be published and offered for sale to the general public editions of a work entitled ZOLAR'S FAMILY HOROSCOPE during the years 1966, 1967, 1968, 1969, 1970 and 1971. Such editions were unauthorized publications and constitute an infringement and violation of the rights granted by Zolar to Doubleday under its agreement dated March 22, 1963. Zolar has sold and is continuing to sell the said editions of the book and such sales have resulted in damage to the business and reputation of Doubleday.
- 27. Defendant Doubleday has notified Zolar that said publications and sales by Zolar are in violation of the rights granted and assigned to it under the agreement, but Zolar has: refused to discontinue publication and sale and wilfully continues to sell unauthorized editions of ZOLAR'S FAMILY HORO-SCOPE, all to the detriment of Doubleday.
- 28. By reason of the foregoing, Doubleday requests that this Court order plaintiff to account for total sales of ZOLAR'S FAMILY HOROSCOPE during the years 1966, 1967, 1968, 1969 1970 and 1971 and the net proceeds derived therefrom in order to determine damages that are due Doubleday as a matter of law.

AS AND FOR A SECOND COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANT DOUBLEDAY ALLEGES:

- 29. Defendant repeats and realleges each and every allegation contained in paragraphs 25through 27, inclusive, of this answer with the same force and effect as if fully set forth herein.
- 30. Defendant Doubleday has suffered and continues to suffer irreparable harm by reason of the continued publication and sale by Zolar of the unauthorized editions of ZOLAR'S FAMILY HOROSCOPE.

AS AND FOR A THIRD COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANT DOUBLEDAY ALLEGES:

- 31. Defendant repeats and realleges each and every allegation contained in paragraphs 25 through 27, inclusive, of this answer with the same force and effect as if fully set forth herein.
- 32. By reason of the unauthorized publication and sale by plaintiff of ZOLAR'S FAMILY HOROSCOPE which constitute an infringement upon defendant Doubleday, defendant Doubleday should be awarded such damages as may be determined as a result of the accounting requested herein.

AS AND FOR A FOURTH COUNTERCLAIM AGAIN T PLAINTIFF, DEFENDANT DOUBLEDAY ALLEGES:

33. On or about January 21, 1963 Doubleday entered into an agreement in writing with Zolar under the terms of which Zolar agreed to deliver to Doubleday two copies of a work entitled ZOLAR'S ENCYCLOPEDIA AND DICTIONALLY OF DREAMS. (A true copy of said agreement is annexed as Exhibit B to this answer.)

Pursuant to the terms of said agreement, Doubleday published the work on or about November 1, 1963 and the copyright which Doubleday took out for said work was assigned Catalogue Card No. 63-21071.

- agreement with Doubleday and after Doubleday published ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS and commenced distribution and sale, Zolar caused to be published and offered for sale to the general public a paperback edition of a work entitled ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS. Such paperback edition bearing the same title as Doubleday's work is an unauthorized publication and constitutes an infringement and violation of the rights granted by Zolar to Doubleday under its agreement dated January 21, 1963. Zolar has sold and is continuing to sell a paperback edition of the book and such sales have resulted in damage to the business and reputation of Doubleday.
- 35. Defendant Doubleday has notified Zolar that the publication and sale by Zolar of the paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS are in violation of the rights granted and assigned to it under the agreement, but Zolar has refused to discontinue publication and sale and wilfully continues to sell an unauthorized paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, all to the detriment of Doubleday.
- 36. By reason of the foregoing, Doubleday requests that this Court order plaintiff to account for total sales of its paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS and the net proceeds derived therefrom in order to determine decreases that are due Doubleday as a matter of law.

AS AND FOR A FIFTH COUNTERCLAIM AGAINST PLAINTIFF, DEFENDANT DOUBLEDAY ALLEGES:

- 37. Defendant repeats and realleges each and every allegation contained in paragraphs 33 through 35, inclusive, of this answer with the same force and effect as if fully set forth herein.
- 38. Defendant Doubleday has suffered and continues to suffer irreparable harm by reason of the continued publication and sale by Zolar of the unauthorized paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS.

AS AND FOR A SIXTH COUNTERCLAIM AGAINST PLAINTIFF DEFENDANT DOUBLEDAY ALLEGES:

- 39. Defendant repeats and realleges each and every allegation contained in paragraphs 33 through 35, inclusive, of this answer with the same force and effect as if fully set forth herein.
- 40. By reason of the unauthorized publication and sale by plaintiff of the paperback edition of ZOLAR'S ENCYCLO-PEDIA AND DICTIONARY OF DREAMS which constitute an infringement upon defendant Doubleday, defendant Doubleday shou'd be awarded such damages as may be determined as a result of the accounting requested herein.

WHEREFORE, defendant Doubleday demands judgment dismissing the complaint in this action and judgment against the plaintiff on its counterclaims, as follows:

On the First Counterclaim

That plaintiff account to Doubleday for all profits derived from the sale of ZOLAR'S FAMILY HOROSCOPE during the years 1966 through 1971, inclusive;

A-43

On the Second Counterclaim

That plaintiff, its officers, employees and agents be permanently enjoined from continuing to publish and sell the unauthorized editions of ZOLAR'S FAMILY HOROSCOPE;

On the Third Counterclaim

That plaintiff be required to pay to Doubleday such damages as may be determined on the accounting requested herein:

On the Fourth Counterclaim

That plaintiff account to Doubleday for all profits derived from the sale of the paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS:

On the Fifth Counterclaim

That plaintiff, its officers, employees and agents be permanently enjoined from continuing to publish and sell the unauthorized paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS:

On the Sixth Counterclaim

That plaintiff be required to pay to Doubleday such damages as may be determined on the accounting requested herein;

together with the costs and disbursements of this action and such other and further relief as to this Court may seem just and proper.

SATTERLER & STEPHENS
Attorneys for Defendant,
DOUBLEDAY & COMPANY, INC.
Office & P. O. Address
277 Park Avenue
New York, N. Y. 10017

(212) 826-6200

STATE OF NEW YORK)

COUNTY OF NEW YORK)

SAMUEL S. VAUGHAN, being duly sworn, deposes and says:

That he is Publisher of DOUBLEDAY & COMPANY, INC., one of the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true to his knowledge except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

Samuel S. Vaughan

Sworn to before me this day of July, 1971.

Notary Public

7.:4 14 1-1

Memorandum of Agreement made this between Doubleday & Company, Inc., of Garden City, N. Y., hereinafter cailed "the Publisher," and

Zolar Publishing Company Inc. 33 West 60th Street New York, N.Y.

hereinafter called "the Author," being the Author and Proprietor of a work at present entitled

ZOLAR'S FAMILY HONOSCOFF: A Complete Astrological Ouide for the Whole Pasily,

hereinafter called "the work."

Werranty ond

1. The Author represents and warrants to the Publisher; (a) that the work is original; (b) that he is the sole author, and proprietor thereof, and has full power to enter into this agreement; (c) that the work has not heretorore been published in whole or in pure in volume form and that he has not entered into or become subject to any contract, agreement or understanuage with respect thereto other than this agreement; (d) that if published it will not intrince upon any proprietary right at common law, or any statutory copyright, or any other right whatsorver; and (c) that it is innocent, and contains no matter whatsoever that is obsecte, liberous, in volation or any right of privacy, or otherwise in contravention or law. The Author shall indemnity and hold the Publisher harmless from any claim, demand, suit, action, proceeding or prescention of and any libility, loss, expense or damage in envesquence thereof) asserted or instituted by reason of and any libility, loss, expense or damage in envesquence thereof) asserted or instituted by reason of and any libility, loss, expense or damage in envesquence thereof) asserted or instituted by reason of and warranty measurement or incurred by the Publisher in connection with the exercise or any of its rights under this agreement. The Publisher shall have the right either to defind such claim, memand, suit, action, proceeding or prosecution by counsel of its selection or, with the consent of the Author, section proceeding or prosecution by counsel of its rights under this agreement. The Publisher shall have the right either counsel to the Author accountable for Firty per cent (Julie) of the amounts paid on settlement for counsel fees and other expenses, or, with the consent of the Author, so settle the same on such terms as it decins advisable holding the Author accountable for Firty per cent (Julie) of the amounts paid on settlement for counsel fees and other expenses, or, with the consent of the Author, and the amounts and the Publisher than any any any any any any any

In the event of a breach of any of the Author's foregoing warranties or any default by the Author in the performance of his aforesaid indemnities the Publisher may at its election and without prejudice to any other right or remedy against the Author terminate this agreement and in such event, the Author shall forthwith repay to the Publisher any advance against earnings or other sums theretorore paid to the Author by the Publisher.

Territory

2. The Author grants and assigns to the Publisher the exclusive right to print, publish, copy and vend the work and the other rights hereinafter reterred to on the terms set forth, throughout the world.

The Author hereby requests and authorizes the Publisher to engage Doubleday Canada Limited to publish the work in Canada, with the same force and effect as if the Author had himself engaged Doubleday Canada Limited so to publish.

Copyright

3. The Publisher is hereby expressly authorized and agrees to take out cop, right in the name of Zolar Fublishin. Commany Inc.

and to take all steps required to secure said copyright in the United States and is authorized in its discretion to take out copyright in such other countries is may be covered by this agreement. The Author agrees to apply for the renewal of said copyright on the expiration of the first term thereof, and authorizes the Publisher to make such application in his name. The Author further agrees to assum to the Publisher, if this agreement has now terminated recviously, the sole and exclusive right to orint, publish, copy and yend the work, and use other right referred to heremafter, during the full term of said renewal, on the same terms and conditions as for the original coopyright term.

The Author hereby authorizes the Publisher to make the Author a confiantial with the Publisher in any litigation around a surface that the publisher in the Author. Any recovery from such litigation shot first be applied to reimburse the Publisher to its expenses in connection therewith, and the balance shall be divided equally between the Author and the Publisher.

4. The Author shall deliver to the Publisher two (2) finally revised copies of the work, satisfactory to the Publisher in content and form, including all illustrations and other graphic material to the work, in a form ready for reproduction, not later than EEP12 15, 1963.

The Author shall also deliver to the Publisher an nadex, it required, promptly after proof is available for making the index. If the Author ruls to smooth 2.1 such index, illustrations and other graphic material in a form ready for reproduction, the Publisher may obtain it and charge the expense thereof against the Author's camings hereunder. It is undersood that such material is considered a part or the work and that all rights granted to the Publisher regended apply also to use of such material. The previous of this clause as to the character, condition and time of recept of such conv are of the essence of the agreement, and in the event of the Author's default bereinder the Publisher may, at its option, say time prior to actual publication of the work, terminate this agreement without prejudice to any other remedy.

Expense of the Author's proof corrections exerciting Ten per cent (10%) of cost of composition shall be charged against the Author's carnings hereu siter.

Fablication

5. The Publisher shall publish the work at its own expense, in such style or styles and under such original imprint as it decins advisable, and shall pay to or upon the order of the Author the following:

(a) On all copies of the teaular trade edition sold by the Publisher in the United States (except as hereinafter set torth) less returns, but with no deduction for each discounts or bad debts, the following royalties on the retail price:

Six per cent (6%)

The Publisher agrees to advance to the Author the sum of One Thousand Five Hunared Dollars (\$1,500.00), payable one-half on receift of this signed agreement and one-half on receipt of complete satisfactory manuscript, it being understood and agreed that this shall be an advance against the total carnings of the Author under this agreement.

Dolchin (b) On all copies of the recular stade edition of the work sold in the Dominion of Canada, an

Other Expert

Cesodias

Royalty

amount equal to be entercant (3 m) of the United States retail price,
rour per cent (4)

(c) On all copies of the Remarking edition of the work sold by the Publisher to other export markets, an amount equal to Light per cent (8%) of the United States retail price, Four per cent (4%)

(d) On all copies of the work sold by the Publisher (less returns) through a special offer made by its Mail Order Department, as distinct from sales made to bookstotes or jobbers, Five per cent (5%) of the Mail Order retail price, exclusive of shipping and handling charges.

Subscription took

(e) On all copies of the state critism of the work sold by the Publisher through its Subscription Books Wholesale Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the retail price, except as hereinafter provided.

In the event the Subscription Books Wholesale Department of the Publisher shall license others to produce the work, the Publisher shall pay to the Author Firty per cent (50%) of the license fees and/or plate rentals received by the Publisher for such license.

In the event the Subscription Books Wholesale Department of the Publisher shall publish a special subscription edition of the work, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher of the sale of copies of such special edition, exclusive of shipping and handling charges.

On sales by the Subscription Books Wholesale Department of copies of the regular or a special edition or excerpts from the work for premium use, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher of such sales, exclusive of shipping and handling charges.

Publishing Rights Outside U.S.A

6. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell English language and translation rights in and to the work in book or serial form (in full-length, condensed or abridged versions) for publication in countries other than the United States. The Publisher shall pay to the Author Seventy-five per cent (75%) of the net proceeds of such sales.

Remainders

7. If the Publisher has a stock on hand which, in its judgment, could not be sold on usual terms in a reasonable time, it may sell such copies to any purchaser or purchasers, including the Publisher's sub-sidaties, at the best price it can secure. If such stock is sold at or below the Publisher's cost, no royalty shall be paid to the Author on such sairs. If such copies are sold above the Publisher's cost, the royalty paid to the Author (in ligu of the royalty set forth in Paragraph 5 hereof) shall be Ten per cent (10%) of the revenue obtained from such sales.

No royalty shall be paid on copies destroyed or on copies given away to promote the sales of the work, whether to regular promotional channels or to bookstores.

book Clabe

8. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell a Book Club edition of the work to the Literary Gold of America, the Book Leasue of America, the Doubleday One Dollar Book Club or to the Literary Gold of America, the Book Stab rights are central or purchase of Book Club or to the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club, the Book Club or the Club or the Club or the Club, the Club or the Club o

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9. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell to other publishers, including any corporation which is a subsidiary or athiate of the Publisher's, the right to bring out a report edition of the work (in full length, condensed or abridged versions), which sale shill provide that such repurits shall not appear on the market within one year after the date of trade publication. The Publisher shall pay to the Author Firty per cont (50%) of the proceeds of such sales. The Publisher also has the right to publish a reprint of ton of the work through its reprint divisions and in the secant a reprint edition is thus published through said report assessment of the Publisher shall pay to the Author one halt the amount which the reprint divisions shall credit to the Publisher shall be a required to the Publisher shall be required. lisher on the books of account of the reprint divisions,

One-Part Magazine Publication 10...The further may sact sell the work for publication in full-length, condensed or abridged one tions in one part becare book publication without the prior consent of the Publisher,

10a. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specific I in Faragraph 2 hereof, the work not publication in newspapers or periodicals in full length, condensed or abridged versions in one part before book publication. The Publisher shall pay to the Author seventy-five per cort (25%) of the proceeds of such sales.

ONLY COPY AVAILABLE

First Serial

11. The Author hereby grafts and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form in newspapers or periodicals before publication in book form. The Publisher shall pay to the Author Kinety per cent (90°F) of the proceeds of sisk sales (except on sales for serial publication in countries other than the United States under Paragraph 6 hereof).

Sacand Sacial

12. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form in newspapers or periodicals after publication in book form (provided such rights have not been retained by the purchasersof the first serial rights). The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

In making sales pursuant to Paragraphs 10, 11, and 12, the Publisher may deal directly with newspapers or periodicals or with those dealers in such literary rights commonly known as syndicates.

Permissions: Extracts Anthologies 13. The Author hereby grants and assigns to the Publisher, after publication of the work in book form, the right to sell extracts therefrom for use in periodicals or books and condensed or abridged versions for use in periodicals (provided such rights have not been retained by the purchasers or the first serial rights) but not in book form except as provided in Paragraphs 6, 8 and 9. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

No payment shall be made to the Author by the Publisher for permission gratuitously given by the Publisher, before or after publication of the work in book form, to publish extracts from the work to benefit the sale thereof.

Motion Pictures Dramatization Public Readings 14. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell dramatic rights with or without music, public reading and other non-dramatic performing rights, and motion picture rights throughout the world in and to and in connection with the said work. The Publisher shall pay to the Author Ninety per cent (99%) of the proceeds of such sales except sound recording (see Paragraph 17). Any sales of the motion picture rights of the work may grant to the purchaser the right to publish, for advertising and exploitation of dramatizations and motion pictures based on the work, excerpts, summaries and synopses of the work or dramatizations or motion pictures thereof, but no such excerpts, summaries or synopses shall exceed 7,500 words in length, nor shall they appear as having been written by the Author, nor shall they be offered to any person, firm or corporation for a monetary consideration.

Redie Television 15. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell radio and television rights, throughout the world, in and to and in connection with said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of sales of the work for adaptation for radio and television.

Commercial Rights 16. The Author grants and assigns to the Publisher the sole and exclusive right to sell, and to license others to rell, subject to the approval of the Author, the commercial rights in and to the Author's name and the work during the period of this agreement. "Commercial Rights" shall be understood to mean the exploitation of the Author's name in connection with the work, and of the work itself and all material contained therein through their use, simulation or grapaic exploitation on or in connection with merchandise. The Publisher shall pay to the Author Fifty per cent (50%) or the net proceeds of such sales.

Sound Recording
Microfilm
Filmstrips
Teoching Machines

17. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell the work or parts of it for (a) sound recording, including phonographic, wire and tape recording, or any other method now or hereafter known or devised; (b) microfilm; (c) filmstrios; (d) programs for machine teaching. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

Rights Not Specified 18. All rights not herein specifically granted to the Publisher are reserved by the Author,

Accounting

19. Statements of sales shall be made up by the Publisher semi-annually as of April thirtieth and October thirty-first, and delivered and settled within four months thereaster. Where any such statement or any other record of account between the Author and the Publisher indicates that the work has not earned the amount of rovalities advanced, or that the Author has received an overpayment of rovalities or is otherwise indebted to the Publisher, the "ublisher may deduct the amount or such unearned royalities, overpayment or other indebtedness from any sums then or thereaster due the Author from the Publisher under this agreement, in its sales accounting statement, the Publisher may set up a reserve which in its opinion will allow for returns during the two royalty accounting periods following the period in which publication occurs. This reserve shall not exceed fifteen per cent (15%) of earnings accrued to the Author in the respective royalty periods.

The Publisher shall, on the written request of the Author, cause the public accountants regularly employed by the Publisher to furnish to the Author a copy of his latest semi-annual royalty statement which will bear the stamp of the firm of accountants.

Any sums paid to the Author shall be returned to the Publisher on demand if said manuscript is not delivered as specified in Paragraph 4 hereof.

Author's Copies

20. The Publisher shall furnish to the Author, free of charge, ten copies of the regular trade edition of the work as published; and should the Author desire any more copies for personal use, they shall be supplied at one-half the retail price. Copies thus purchased shall not be resold.

Discontinuosco e

21. The Publisher in its discretion may at any time determine to discontinue the publication of the work without prejudice to its rights hereunder. In that event, it shall give notice of such determination to the Author by registered mail at the address last given by him. Within thirty days after the mailing of such notice the Author shall have the right to purchase from the Publisher at cost any existing sheet and bound stock which is the unrestricted property of the Publisher. Upon making such purchase the disposition of rights hereunder shall be by mutual agreement.

Verified Copies of Sab-Agreements 22. The Publisher undertakes, upon request, to furnish to the Author verified copies of any agreements which the Publisher may make with any third party for the disposition of any rights in the work granted to the Publisher.

Governmentel Restriction 23. The performance of the Publisher pursuant to this agreement is subject to governmental restrictions on executal materials and supplies, acts of war, strikes or other conditions beyond the control of

Lankreptcy

24. In case of hinkrupicy, receivership, or assignment for benefit of creditors of the Publisher, the right of publication shall revert to the Author and thereupon this agreement shall terminate but the Author shall have the right to buy back any remaining copies or sheets at a fair market value, to be determined by agreement.

fiece of Execution

25. Regardless of the place of its actual execution and delivery, this agreement shall be treated as though executed within the State of New York, and shall be governed by the laws and statutes thereof.

Heirs and Assigns

26. This agreement shall be binding upon and shall inure to the benefit of the heirs, executors or administrators of the Author and any successor in business of the Publisher, but neither party shall otherwise separately sell or ⇒sign his or its interests in this agreement without the written consent of the other. In the event of any such assignment by the Publisher, the Author shall nevertheless remain lable to the Publisher (as well as to the assignee) on each of his obligations under Paragraph 1 of this agreement.

Optio

27. The Author hereby agrees that the Publisher shall have the first option to publish the Author's next full-length book, but in no case shall the Publisher be required to exercise this option within three months following publication of the work the subject of this agreement.

Limitation

28. This agreement shall not be binding upon either the Publisher or the Author unless it is signed by both parties and delivered to the Publisher within a period of two months from the date of the agreement.

Whole

29. This agreement contains the whole understanding of the parties, supersedes all previous oral or written representations or agreements and may not be changed, modified or discharged orally. Any modification, change or discharge of this agreement must be in writing and signed by the Publisher.

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Memorandum of Agreement made this 21st day of January, 19 63 between Doubleday & Company, Inc., of Garden City, N. Y., hereinafter called "the Publisher," and

Zolar Publishing Company Inc. 33 West buth Street New York City

bereinafter called "the Author," being the Authorana Proprietor of a work at present entitled EXCYCLIFED A AND DICTIONARY OF DREAMS

ZOLAR'S OFFICIAL DREAM DICTIONARY AND ENCYCLOPEDIA,

Zelar

hereinafter called "the work."

Warrenty and

l. The Author represents and warrants to the Publisher: (a) that the work is original: (b) that he is the sole author and proprietor thereof, and has full power to enter into this agreement; (c) that the work has not heretoire been published in whole or in part in volume form and that he has not entered into or become subject to any contract, agreement or understanding with respect thereto other than this agreement; (d) that if published it will not intringe upon any proprietary right at common law, or any statutory copyright, or any other right whatsoever; and (e) that it is innocent, and contains no matter whatsoever that is obscene, liberous, in violation of any right of privacy, or otherwise in contravention of law. The Author shall indemnity and hold the Publisher narmless from any claim, demand, suit, action, proceeding or prosecution (and any liability, loss, expense or damage in consequence thereof) asserted or instituted by reason of the publisherion or sale of the work or the Publisher's exercise or enjoyment of any of its rights under this agreement, or by reason or any warranty or indemnity made, assumed or incurred by the Publisher in connection with the exercise of any of its rights under this agreement. The Publisher shall have the right either to defend such claim, demand, suit, action, proceeding or prosecution by counted of its selection or, with the consent of the Author, to selle the same on such terms as it deems advisable holding the Author accountable for Fifty per cent (50%) of the amounts paid on settlement for counsel tees and other expenses, or, with the opin written approval of the Publisher, the Author hashile le limited to remburating the Publisher ot the extent of non-allorisher, the arctical in-demnity of the Author shall be limited to remburating the Publisher of the extent of one-half of the net expenses incurred by the Publisher in connection theevith. The Publisher shall have the right in its discretion to extend the benefit of the Author's aforesaid warranties and indemnitie

In the event of a breach of any of the Author's foregoing warranties or any default by the Author in the performance of his aforesaid indemnities the Publisher may at its election and without prejudice to any other right or remedy against the Author terminate this agreement and in such event, the Author shall forthwith repay to the Publisher any advance against earnings or other sums theretorore paid to the Author by the Publisher.

Rights Granted

The Author grants and assigns to the Publisher the exclusive right to print, publish, copy and tend the work and the other rights hereinafter referred to on the terms set forth, throughout the world.

The Author hereby requests and authorizes the Publisher to engage Doubleday Canada Limited to publish the work in Canada, with the same force and effect as if the Author had himself engaged Doubleday Canada Limited so to publish.

Copyright

3. The Publisher is hereby expressly authorized and agrees to take out copyright in the name of

and to take all steps required to secure said copyright, in the United States and is authorized in its discretion to take out copyright in such other countries as may be covered by this agreement. The Author agrees to apply for the renewal or said copyright on the expiration of the institute there are the renewal or said copyright on the expiration of the institute agreement. The Author agrees to apply for the renewal or said copyright on the expiration of the institute agreement. The Author further agrees to assign to the Publisher, if this agreement has not terminated previously, the soic and exclusive right to print, publish, copy and yend the work, and the other in sits reterred to heremaiter, during the rull term of said renewal, on the same terms and conditions as for the original copyright term.

The Author hereby authorizes the Publisher to make the Author a co-plantifi with the Publisher in any litigation against a third party for intringement of the copyright on the work, but without cost to the Author. Any recovery from such hitigation shall host be applied to reimourse the Publisher for its expenses in connection therewith, and the balance shall be divided equally between the Author and the Publisher.

Manascript Character Dee Date Author's

4. The Author shall deliver to the Publisher two (2) finally revised conics of the work, satisfactory to the Publisher in content and form, including all illustrations and other graphic material to the work, in a form ready for reproduction, not later than (in norms.)

The Author shall also deliver to the Publisher an index, it required, promptly after proof is available for making the index. If the Author fails to supply all such index, iii strations and other graphic material in a form ready for reproduction, the Patissher may obtain it and charge the expense thereof against the Author's earnings hereinder. It is uncerstood that such material is considered a part of the work and that all rights granted to the Publisher hereinder apply also to use of such material. The provisions of this clause as to the character, condition and time of recept of such copy are of the essence of the agreement, and in the event of the Author's default hereinder the Publisher nay, 50 its option, any time prior to actual publication of the work, terminate this agreement without prejudice to any other remedy.

Expense of the Author's proof corrections exceeding Ten per cent (1076) of cost of composition shall be charged against the Author's earnings hereunder.

Publication

5. The Publisher shall publish the work at its own expense, in such style or styles and under any such original imprint as it deems advisable, and shall pay to or upon the order of the Author the following:

Trade Revelty

(a) On all copies of the regular trade edition sold by the Publisher in the United States (except as hereinatter set forth) less returns, but with no deduction for cash discounts or had debts, the following toyalties on the retail price:

Fifteen per cent (15%).

20.62

The Publisher agrees to advance to the Author the sum of Two Thousand Lollars (£2,000.00), payable on receipt of this signed agreement, it being unperstood and agreed that this shall be an advance against the total earnings of the Author under this agreement.



Consdian Loyalty (b) On all copies of the regular trade edition of the work sold in the Dominion of Canada, an amount equal to Five per cent (5%) of the United States retail price.

Other Export

(c) On all copies of the regular trade edition of the work rold by the Publisher to other export markets, an amount equal to Light per cent (8%) of the United States retail price,

Mall Order

(d) On all copies of the work sold by the Publisher (less returns) through a special offer made by its Mail Order Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the Mail Order retail price, exclusive of shipping and handling charges.

Subscription Sooks Wholesole (e) On all copies of the trade edition of the work sold by the Publisher through its Subscription Books Wholesale Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the retail price, except as hereinaiter provided.

In the event the Subscription Books Wholesale Department of the Publisher shall license others to produce the work, the Publisher shall pay to the Author Fifty per cent (50%) of the license fees and/or plate rentals received by the Publisher for such license.

In the event the Subscription Books Wholesale Department of the Publisher shall publish a special subscription edition of the work, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher or the sale of copies of such special edition, exclusive of shipping and handling charges.

On sales by the Subscription Books Wholesale Department of copies of the regular or a special edition or excepts from the work for premium use, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher of such sales, exclusive of shipping and handling charges.

Publishing Pights Outside U.S.A. & Translations 6. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell English language and translation rights in and to the work in book or serial form (in full-length, condensed or abridged versions) for publication in countries other than the United States. The Publisher shall pay to the Author Seventy-live per cent (75%) of the net proceeds of such sales.

Romolader

7. If the Publisher has a stock on hand which, in its judgment, could not be sold on usual terms in a reasonable time, it may sell such copies to any purchaser or purchasers, including the Publisher's subsidiaries, at the best price it can secure, If such stock is sold at or below the Publisher's cost, no royalty shall be paid to the Author on such tales. If such copies are sold above the Publisher's cost, the royalty paid to the Author (in lieu of the royalty set rorth in Paragraph 5 hereof) shall be Ten per cent (1055) of the revenue obtained from such sales.

No royalty shall be paid on copies destroyed or on copies given away to promote the sales of the work, whether to regular promotional channels or to bookstores.

Book Clobs

8. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell a Rook Club edition of the work to the Literary Guild of America, the Book-of-the-Month Club, the Book League of America, the Doubleday One Dollar Book Club or any similar organization which operates on the basis of plate rental or purcuise of John Club rights (in full length, confisced or abridged versions). The Publisher shall pay to the Author Fitty per cent (50%) of the net proceeds of such sales.

Reprists

9. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell to other publishers, including any corporation which is a subsidiary or affiliate of the Publisher's, the right to bring out a reprint edition of the work (in full length, condensed or abridged versions), which sale shift provide that son reprints shall not appear on the market within one year atter the date of trade publication. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales. The Publisher also has the right to publish a reprint edition of the work through its reprint divisions and in the event a reprint edition is thus published through said reprint divisions, the Publisher shall pay to the Author one half the amount which the reprint divisions shall credit to the Publisher on the books of account of the reprint divisions.

One-Port Magazine

- 10. The Author may not sell the work for publication in full-length, condensed or abridged versions in one part before book publication without the prior consent of the Publisher...
- 10a. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work for publication in newspapers or periodicals in full-length, condensed or abridged versions in one part before look publication. The Publisher shall pay to the Author Seventy five per cent (75%) of the proceeds of such sales.

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First Serial

11. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the terratory specified in Paragraph 2 hereof, the work or parts of it for publication in serial from in new-papers or periodicals before publication in book form. The Publisher shall pay to the Aut of Ninety per cent (2007) of the proceeds of such sales (except on sales for serial publication in countries other than the United States under Paragraph 6 hereof).

Second Serial

12. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form by newspapers or periodicals after publication in book form (provided such rights have not been returned by the purchaser of the first serial rights). The Publisher shall pay to the Author Fifty per cent (80%) of the proceeds of such sales.

In making sales pursuant to Paragraphs 10, 11, and 12, the Publisher may deal directly with new-papers or periodicals or with those dealers in such literary rights commonly known as syndicates.

Permissions: Extracts Anthologies Abridged Versions

13. The Author hereby grants and assigns to the Publisher, after publication of the work in book form, the right to sell extracts therefrom for use in periodicals or books and condensed or abtidged versions for use in periodicals (provided such rights have not been retained by the purchasers of the first serial rights) but not in book form except as provided in Paragraphs 6, 8 and 9. The Publisher shad pay to the Author Fifty per cent (50%) of the proceeds of such sales.

No payment shall be made to the Author by the Publisher for permission gratuitously given by the Publisher, before or after publication of the work in book form, to publish extracts from the work to benefit the sale thereof.

Motion Pictures Dramatization Public Readings

14. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell dramatic rights with or without music, public reading and other non-dramatic performing rights, and reaction picture rights throughout the world in and to and in connection with the said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of such sales, except sound recording (see Paragraph 17). Any sales of the notion picture rights of the work may grant to the purchaser the right to publish, for advertising and exploitation of dramatizations and motion pictures based on the work, excepts, summaries and synopses of the work or dramatizations or motion pictures thereof, but no such excepts, summaries or synopses shalf exceed 7,500 words in length, nor shall they appear as having been written by the Author, nor shall they be offered to any person, firm or corporation for

Redie Television

15. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell radio and television rights, throughout the world, in and to and in connection with said work. The Publisher radio and television.

Commercial

16. The Author grants and assigns to the Publisher the sole and exclusive right to sell, and to licease others to sell, subject to the approval of the Author, the commercial rights in and to the Author's name and the work during the period of this agreement. "Commercial Rights" shall be understood to mean the exploitation of the Author's name in connection with the work and of the work itself and all material contained therein through their use, simulation or graphic exploitation on or in connection with merchaniste. The Publisher shall pay to the Author Fifty per cent (50%) of the

Sound Recording Microfilm Filmstrips Tracking Machines

17. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell the work or parts of it for (a) sound recording, including phonographic, were and tape recording, or any other method now or hereafter known or devised; b) micronlin; (c) rilmstrips; (d) programs for machine teaching. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

Rights Not Specified

18. All rights not herein specifically granted to the Publisher are reserved by the Author.

Semi-Assuat Accounting

19. Statements of sales shall be made up by the Publisher semi-annually as of April thirtieth and October thirty-first, and delivered and settled within four months thereafter. Where any such reatement or any other record of account between the Author and the Publisher indicates that the work has not carried the amount of royalites advanced, or that the Author has received an overoayment of royalites, overpayment or other indebtedness from any sums then or thereafter due the Author from the Publisher under this agreement. In its sales accounting statement, the Publisher may set up a reserve which in its opinion will allow for returns during the two royalty accounting periods following the period in which publication occurs. This reserve shall not exceed fifteen per cent (15%) of earnings accrued to the Author in the respective royalty periods.

The Publisher shall, on the written request of the Author, cause the public accountants regularly employed by the Publisher to furnish to the Author a copy of his latest semi-annual royalty statement which will bear the stamp of the firm of accountants.

Any sums paid to the Author shall be returned to the Publisher on demand if said manuscript is not delivered as specified in Paragraph 4 hereot-

Author's Coples

20. The Publisher shall furnish to the Author, free of charge, ten copies of the regular trade edition of the work as published; and should the Author desire any more copies for personal use, they shall be supplied at one-half the retail price. Copies thus perchased shall not be resold.

Discontinuance of

21. The Publisher in its discretion may at any time determine to discontinue the publication of the work without prejudice to its rights hereunder. In that event, it shall give notice or such determination to the Author by registered mail at the address last given by him. Within thirty days after the making of such notice the Author shall have the right to purchase from the Publisher at cost any existing successful and bound stock which is the unrestricted properts of the Publisher. Upon making such purchase the disposition of rights hereunder shall be by mutual agreement.

Verified Copies of Sub-Agreements

. 22. The Publisher undertakes, upon request, to furnish to the Author verified copies of any agreements which the Publisher may make with any third party for the disposition of any rights in the work granted to the Publisher.

Governmental Restriction or War

* 23. The performance of the Publisher pursuant to this agreement is subject to governmental restrictions on essential materials and supplies, acts of war, strikes or other conditions beyond the control of the Publisher.

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Bestreptcy

24. In case of bankruptcy, receivership, or assignment for benefit of creditors of the Publisher, the right of publication shall revert to the Author and increupon this agreement shall terminate but the Author shall have the right to buy back any remaining copies or sheets at a fair market value, to be determined by agreement.

fluce of

25. Regardless of the place of its actual execution and delivery, this agreement shall be treated as though executed within the State of New York, and shall be governed by the laws and statutes thereof.

Heirs and Assigns

26. This agreement shall be binding upon and shall inure to the benefit of the heirs, executors or administrators of the Author and any successor in business of the Publisher but neither party shall otherwise separately sell or assign his or its interests in this agreement without the written consent of the other. In the event or any such assignment by the Publisher, the Author shall nevertheless remain liable to the Publisher (as well as 60 the assignee) on each of his obligations under Paragraph 1 of this agreement.

Cetto

27. The Author hereby agrees that the Publisher shall have the first option to publish the Author's next full-length book, but in no case shall the Publisher be required to exercise this option within three months following publication of the work the subject of this agreement.

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28. This agreement shall not be binding upon either the Publisher or the Author unless it is signed by both parties and delivered to the Publisher within a period of two months from the date of the agreement.

Whole

29. This agreement contains the whole understanding of the parties, supersedes all previous oral or written representations or agreements and may not be changed, modified or discharged orally. Any modification, change or discharge of this agreement must be in writing and signed by the Publisher.

Witness to signature of Author-Proprietor:

Witness to signature of Publisher:

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AUTHOR-PROPRIETOR

Zolar Publishing Company Inc.

DOUBLEDAY & COMPANY, INC.

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DOUBLEDAY & COMPANY. INC. Publishers



277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000

April 9, 1965

Mr. Bruce King Zolar Publishing Company 33 West 60th Street New York, New York 10023

Re: ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, by Zolar.

Dear Mr. King:

This letter, when signed by Zolar Publishing Company and countersigned by Doubleday & Company, Inc., will corve as an agreement concerning publication rights in ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, by Zolar, which was the subject of an agreement between us dated January 21, 1953.

- 1. We grant to you the right to publish a hardcover edition of the Work in the English language, at a price not less than \$2.00 per copy, in the United States. Canada and the Philippine Islands: territory other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language.
- 2. All other rights granted to us under the agreement of January 21, 1963 for the publication of the above Work, remain in our sole and exclusive possession.
- 3. It is understood and agreed that you have purchased the remaining copies of the regular trade edition of the Work at 87¢ per copy and that no royalties are to be paid to you on the copies thus purchased.
- 4. If, however, within six (6) months from date of this letter, we have made no sale of the reprint rights to the Work in the United States, Canada and the Philippine Islands: territory other than the U.S.A., the Philippine Islands and the British Commonwealtn (exclusive of Canada) being an open market for copies produced in the English language, you may then request that such rights be reverted to you, at which time we will consider your request.

If the above is to your understanding and agreement, please sign this letter and return both copies to us for our countersignature. One copy will then be sent to you for your records.

LeBaron R. Barker, Jr.

AGREED: ZOLAR PUBLISHING COMFANY

JS

DOUBLEDAY & CCMPANY, INC.

EXHIBIT C A-54

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

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Plaintiff,

-against-

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC.,

71 CIVE 2061 STEPHES
VERIFIED ANSWER

ECOND FOLDS

Defendants. :

Defendant, Coronet Communications, Inc. ("Coronet"), successor by merger to Paperback Library, Inc. ("Paperback"), by its attorneys, Satterlee & Stephens, for its answer to the complaint, alleges upon information and belief:

- 1. Denies each and every allegation contained in paragraph FIRST, except it admits that the action is brought under Title 17 U.S.C.A. §§1 and 101 (Federal Copyright Act of 1947) and otherwise alleges that it is without knowledge or information sufficient to form a belief with respect to the truth of the allegations that plaintiff was and is a corporation incorporated under the laws of the State of New York and has its principal place of business in the Borough of Manhattan, City and State of New York.
- 2. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs SECOND, THIRD, FOURTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH and TWELFTH.
- 3. Denies each and every allegation contained in paragraph FIFTH.
- Denies each and every allegation contained in paragraph ELEVENTH, except it alleges that of or about May 15, 1970, Paperback entered into an Agreement ith defendant

Doubleday & Company, Inc. ("Doubleday") in which Doubleday granted to Paperback a restricted reprint publication license and that pursuant to said license, defendant Coronet published the Paperback Library edition of ZOLAR'S FAMILY HOROSCOPE.

- 5. With respect to paragraph THIRTEENTH, defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs FIRST through TWELFTH, inclusive, with the same force and effect as if fully set forth herein.
- 6. Denies each and every allegation contained in paragraph FOURTEENTH, except it admits that said defendant is and at all times has been a corporation organized under the laws of the State of New York and that Paperback is a division of said defendant.
- 7. Denies each and every allegation contained in paragraph FIFTEENTH, except it admits that on or about March 24, 1970 Paperback Library entered into a distribution agreement with Independent News Co., Inc. ("Independent News") and that distribution under said agreement commenced on or about July : 1, 1970, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in said paragraph insofar as they relate to Independent News.
- 8. Denies each and every allegation contained in paragraphs SIXTEENTH and EIGHTEENTH, except it admits that on or about May 15, 1970, Paperback entered into an Agreement with Doubleday and pursuant to such Agreement, Coronet caused to be published a paperback edition of ZOLAR'S FAMILY HOROSCOPE on or about September 15, 1970. Defendant further alleges that on or about March 24, 1970, Paperback entered into an Agreement with Independent News for the distribution of ZOLAR'S FAMILY HOROSCOPE and distribution under said Agreement commenced on or about July 1, 1970.

- 9. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs SEVENTEENTH, NINETEENTH and TWENTIETH, except it alleges that pursuant to the Agreement between Paperback and Doubleday and Paperback and Independent News, said defendant published and distributed a paperback edition of ZOLAR'S FAMILY HOROSCOPE, which edition is identified by the legend "A PAPERBACK LIBRARY OCCULT BOOK 65-476" which appears on its cover.
- 10. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph TWENTY-ONE, except it admits that on or about September 24, 1970, Paperback received a copy of a letter written by plaintiff's attorney to defendant Doubleday in which he raised the alleged claim of copyright infringement.
- TWENTY-THREE and TWENTY-FOUR, except it admits that pursuant to the Agreement of May 15, 1970 between Paperback and Doubleday said defendant published and offered for sale a paperback edition of ZOLAR'S FAMILY HOROSCOPE, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in said paragraphs insofar as they relate to the other defendants.
- 12. With respect to paragraph TWENTY-FIVE defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs FIRST, FOURTEENTH and FIFTEENTH with the same force and effect as if fully set forth herein.
- 13. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs TWENTY-SIX, TWENTY-SEVEN, TWENTY-EIGHT,

TWENTY-NINE, THIRTY, THIRTY-ONE, THIRTY-TWO, THIRTY-THREE,
THIRTY-FOUR and THIRTY-FIVE, except it admits that on or about
April 24, 1969, Paperback entered into an Agreement with Doubleday whereby a restricted reprint publication license was granted
to Paperback for ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS.

- 14. Denies each and every allegation contained in paragraphs THIRTY-SIX and THIRTY-SEVEN, except it alleges that on or about October 15, 1969, it published a paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, and that said paperback edition was distributed by Independent News pursuant to an Agreement entered into by and between Paperback and Independent News on or about March 24, 1970, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations in said paragraphs insofar as they relate to the other defendants.
- 15. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph THIRTY-EIGHT, except it admits that it did not notify plaintiff of its intent to publish and distribute the Paperback Library edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS pursuant to the license granted to Paperback by Doubleday.
- 16. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph THIRTY-NINE, except it admits that pursuant to the Agreement between Paperback and Doubleday of April 24, 1969, it has published and distributed a paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS for the retail price of \$1.25.
- 17. Denies knowledge or information sufficent to form a belief with respect to the truth of the allegations contained in paragraph FORTY, except it admits that on or about

September 24, 1970, Paperback received a copy of a letter written by plaintiff's attorney to defendant Doubleday in which he raised the alleged claim of copyright infringement.

- paragraph FORTY-ONE, except it admits that on or about October 15, 1969, it published a paperback edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS pursuant to the reprint publication license granted in the Agreement between Doubleday and Paperback of April 24, 1969 and that said paperback edition has the retail price of \$1.25, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph FORTY-ONE insofar as they relate to the other defendants.
- 19. Denies each and every allegation contained in paragraph FORTY-TWO.

AS AND FOR AN AFFIRMATIVE DEFENSE

The complaint fails to state a claim against the defendant Coronet upon which relief can be granted.

WHEREFORE, defendant Coronet demands judgment dismissing the complaint in this action together with costs and disbursements.

SATTERLEE & STEPHENS
Attorneys for Defendant
Coronet Communications, Inc.
277 Park Avenue
New York, New York 10017

826-6200

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HENRY B. BOBROW , being duly sworn, deposes and says:

Assistant
That he is Secretary of CORONET COMMUNICATIONS, INC.,
one of the defendants in the above entitled action; that he has
read the foregoing answer and knows the contents thereof; that
the same is true to his knowledge except as to matters therein
stated to be alleged upon information and belief, and that as
to those matters he believes them to be true.

Henry B. Beliew

Sworn to before me this

9th day of August, 1971.

Notary Public

THEODORE M. GRELNBERG Rolary Public, State of New York No. 30-66496.25 Qualified in Nassau County Commission Expires March 30, 1579 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

| 170 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100

ZOLAR PUBLISHING CO., INC.,

Plaintiff,

71 Civ. 2061

VERIFIED ANSWER

-against-

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC.,

Defendants.

Defendant, Independent News Co., Inc. ("Independent News"), by its attorneys, Satterlee & Stephens, for its answer to the complaint, alleges upon information and belief:

- under Title 17 U.S.C.A. §§1 and 101 (Federal Copyright Act of 1947), but denies all other allegations contained in paragraph. FIRST, except that it alleges that it is without knowledge or information sufficient to form a belief with respect to the true of the allegations that plaintiff is a New York corporation having its principal place of business in the Borough of Manhatta? City and State of New York.
- 2. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH and TWELFTH.
- 3. With respect to paragraph THIRTEENTH, defendant repeats and realleges each and every denial or admission hereto fore pleaded in answer to paragraph FIRST through TWELFTH,

- 4. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs FOURTEENTH, SIXTEENTH, SEVENTEENTH and NINETEENTH.
- 5. Denies each and every allegation contained in paragraphs FIFTEENTH and EIGHTEENTH, except admits that the defendant Independent News is a New York corporation having its principal place of business in the State of New York and that on or about March 24, 1970, said defendant entered into a distribution agreement with Paperback Library and pursuant to such agreement, the Paperback Library edition of ZOLAR'S FAMILY HOROSCOPE was distributed in the United States and foreign countries.
- 6. Denies each and every allegation contained in paragraph TWENTIETH, except it admits that pursuant to its agreement with Paperback Library dated March 24, 1970, said defendant is and has been engaged in the distribution of ZOLAR'S FAMILY HOROSCOPE, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations insofar as they relate to the other defendants.
- 7. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph TWENTY-ONE, except said defendant admits that on or about September 24, 1970, it received a copy of a letter written by plaintiff's attorney to defendant, Doubleday & Company, Inc. ("Doubleday"), in which plaintiff's attorney raised the alleged claim of copyright infringement.
- 8. Denies each and every allegation contained in paragraphs TWENTY-THREE and TWENTY-FOUR, except said defendant admits that pursuant to its agreement with Paperback Library A-62

dated March 24, 1970, it has distributed ZOLAR'S FAMILY HORO-SCOPE, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in said paragraphs insofar as they relate to the other defendants.

- 9. With respect to paragraph TWENTY-FIVE defendant repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs FIRST, FOURTEENTH and FIFTEENTH with the same force and effect as if fully set forth herein.
- 10. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraphs TWENTY-SIX, TWENTY-SEVEN, TWENTY-EIGHT, TWENTY-NINE, THIRTY, THIRTY-ONE, THIRTY-TWO, THIRTY-THREE, THIRTY-FOUR, THIRTY-FIVE, THIRTY-SIX and THIRTY-EIGHT.
- paragraph THIRTY-SEVEN, except said defendant admits that pursuant to an agreement dated March 24, 1970, it distributed nationally and internationally copies of the Paperback Library edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS.
- 12. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations contained in paragraph THIRTY-NINE, except it admits that pursuant to its agreement dated March 24, 1970, said defendant has distributed the Paperback Library edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS and that the retail price of said edition is \$1.25.
- 13. Denies knowledge or information sufficient to form a belief with respect to the truth of the allegations con-

tained in paragraph FORTY, except said defendant admits that on or about September 24, 1970, it received a copy of a letter written by plaintiff's attorney to defendant Doubleday in which plaintiff's attorney raised the alleged claim of copyright infringement.

paragraphs FORTY-ONE and FORTY-TWO, except said defendant admits that pursuant to its agreement with Paperback Library dated March 24, 1970, said defendant has distributed the Paperback Library edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, and otherwise denies knowledge or information sufficient to form a belief with respect to the truth of the allegations in said paragraphs insofar as they relate to the other defendants.

AS AND FOR AN AFFIRMATIVE DEFENSE

The complaint fails to state a claim against the defendant Independent News upon which relief can be granted.

WHEREFORE, defendant, Independent Co., Inc., demands judgment dismissing the complaint in this action together with costs and disbursements.

SATTERLEE & STEPHENS
Attorneys for Defendant,
INDEPENDENT NEWS CO., INC.
Office & P. O. Address
277 Park Avenue
New York, New York 10017
Tel. (212) 826-6200

COUNTY OF NEW YORK) : ss.:

BERNARD KASHDAN, being duly sworn, deposes and says:

That he is Secretary of INDEPENDENT NEWS CO., INC., one of the defendants in the above entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true to his knowledge except as a matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

Bemarkerking

Sworn to before me this

9th day of August, 1971.

Ngtary Public

Notary Public, State of New York No. 60-0332650 Qualified in Westchester County Jerm Expires March 30, 1973 Memorandum of Agreement made this 22nd day of March. between Doubleday & Company, Inc., of Garden City, N. Y., hereinafter called "the Publisher," and

Zolar Publishing Company Inc. 33 West 60th Street New York, N.Y.

bereinafter called "the Author," being the Author and Proprietor of a work at present entitled

ZOLAR'S FAMILY HOLOSCOPE: A Complete Astrological Guide for the Whole Family,

bereinafter called "the work."

1. The Author represents and warrants to the Publisher: (a) that the work is original; (b) that he is the sole anthor represents and warrants to the Publisher: (a) that the work is original; (b) that he is the sole anthor represents represent thereof, and has full power to enter into this agreement; (c) that the work has not heretofore been published in whole or in part in volume form and that he has not entered into or become subject to any contract, agreement or understanding with respect thereto other than this agreement; (d) that if published it will not infringe upon any proprietary right at common law, or any statutory copyright, or any other right whatsoever; and (e) that it is innocent, and contains no matter whatsoever that is obscene, libelous, in violation of ear right of privacy, or otherwise in contravention of law. The Author shall indennify and hold the Publisher harmless from any claim, demand, suit, action, proceeding or prosecution (and any liability, loss, expense or damage in consequence thereof) asserted or instituted by reason of the publication or sale of the work or the Publisher's exercise or enjoyment of any of its rights under this agreement, The Publisher shall have the right either to defend such claim, demand, suit, action, proceeding or prosecution by counsel of its selection or, with the consent of the Author, to settle the same on such terms as it deems advisable holding the Author accountable for Fifty per cent (50%) of the amounts paid on settlement for counsel fees and other expenses, or, with the prior written approval of the Publisher, the Author may defend or settle the same. In the event of a final judgment dismissing any such claim, demand, suit, action, proceeding or prosecution without liability to the Publisher, the aforesaid indemnity of the Author shall be limited to reimbursing the Publisher to the extent of one-half of the net expenses incurred by the Publisher in connection therewith. The Publisher shall have the right in its discretion to extend the benefit of t

In the event of a breach of any of the Author's foregoing warranties or any default by the Author in the performance of his aforesaid indemnities the Publisher may at its election and without prejudict to any other right or remedy against the Author terminate this agreement and in such event, the Author shall forthwith repay to the Publisher any advance against earnings or other sums theretofore paid to the Author by the Publisher.

2. The Author grants and assigns to the Publisher the exclusive right to print, publish, copy and vend the work and the other rights herein after referred to on the terms set forth, throughout the world.

The Author hereby requests and authorizes the Publisher to engage Doubleday Canada Limited to publish the work in Canada, with the same force and effect as if the Author had himself engaged Doubleday Canada Limited so to publish.

3. The Publisher is hereby expressly authorized and agrees to take out copyright in the name of Zolar Fiblishing Company Inc.

and to take all steps required to secure said copyright in the United States and is authorized in its discretion to take out copyright in such other countries as may be covered by this agreement. The Author agrees to apply for the renewal of said copyright on the expiration of the first term thereof, and authorizes the Publisher to make such application in his name. The Author further agrees to assign to the Publisher, if this agreement has not terminated previously, the sole and exclusive right to print, publish, copy and vend the work, and the other rights referred to hereinafter, during the full term of said renewal, on the same terms and conditions as for the original copyright term.

The Author hereby authorizes the Publisher to make the Author a co-plaintiff with the Publisher in any litigation against a third party for infringement of the copyright on the work, but without cost to the Author. Any recovery from such litigation shall first be applied to reimburse the Publisher for its expenses in connection therewith, and the balance shall be divided equally between the Author and the Publisher.

4. The Author shall deliver to the Publisher two (2) finally revised copies of the work, satisfactory to the Publisher in content and form, including all illustrations and other graphic material essential to the work, in a form ready for reproduction, not later than April 15, 1963.

The Author shall also deliver to the Publisher an index, if required, promptly after proof is available for making the index. If the Author fails to supply all such index, illustrations and other graphic material in a form ready for reproduction, the Publisher may obtain it and charge the expense thereof against the Author's earnings hereunder. It is understood that such material is considered a part of the work and that all rights granted to the Publisher hereunder apply also to use of such material. The provisions of this clause as to the character, condition and time of receipt of such copy are of the essence of the agreement, and in the event of the Author's default hereunder the Publisher may, at its option, any time prior to actual publication of the work, terminate this agreement without prejudice to any other remedy.

Expense of the Author's proof corrections exceeding Ten per cent (10%) of cost of composition shall be charged against the Author's corning hereunder. DANT

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5. The Publisher shall publish the work at its own expense, in such style or styles and under any such original imprint as it deems advisable, and shall pay to or upon the order of the Author the following:

Trade Royalty In the U.S.

(a) On all copies of the regular trade edition sold by the Publisher in the United States (except as hereinafter set forth) less returns, but with no deduction for cash discounts or bad debts, the following royalties on the retail price:

Six per cent (6%)

The Publisher agrees to advance to the Author the sum of One Thousand Five Hundred Dollars (\$1,500.00), payable one-half on receipt of this signed agreement and one-half on receipt of complete satisfactory manuscript, it being understood and agreed that this shall be an advence against the total carnings of the Author under this agreement.

(b) On all copies of the <u>kegular trade</u> edition of the work sold in the Dominion of Canada, an amount equal to Fine per cent (1.5)

(c) On all copies of the sequence trade edition of the work sold by the Publisher to other export markets, an amount equal to Fight per cent (85) of the United States retail price.

Mail Order

(d) On all copies of the work sold by the Publisher (less returns) through a special offer made by its Mail Order Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the Mail Order retail price, exclusive of shipping and handling charges.

(e) On all copies of the Value cutton of the work sold by the Publisher through its Subscription Books Wholesale Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the retail price, except as hereinafter provided.

In the event the Subscription Books Wholesale Department of the Publisher shall license others to produce the work, the Publisher shall pay to the Author Fifty per cent (50%) of the license fees and/or plate rentals received by the Publisher for pich license.

In the event the Subscription Books Wholesale Department of the Publisher shall publish a special subscription edition of the work, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher of the sale of copies of such special edition, exclusive of shipping and handling charges.

On sales by the Subscription Books Wholesale Department of copies of the regular or a special edition or excerpts from the work for premium use, the Publisher shall pay to the Author Five per cent (5%) of the proceeds to the Publisher of such sales, exclusive of shipping and handling charges.

6. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell English language and translation rights in and to the work in book or serial form (in full-length, condensed or abridged versions) for publication in countries other than the United States. The Publisher shall pay to the Author Seventy-five per cent (75%) of the net proceeds of such sales.

7. If the Publisher has a stock on hand which, in its judgment, could not be sold on usual terms in a reasonable time, it may sell such copies to any purchaser or purchasers, including the Publisher's self-aidiaries, at the best price it can secure. If such stock is sold at or below the Publisher's cost, no royalty shall be paid to the Author on such sales. If such copies are sold above the Publisher's cost, the royalty paid to the Author (in lieu of the royalty set forth in Paragraph 5 hereof) shall be Ten per cent (10%) of the revenue obtained from such sales.

No royalty shall be paid on copies destroyed or on copies given away to promote the sales of the work, whether to regular promotional channels or to bookstores.

Book Clubs

8. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell a Book Club edition of the work to the Literary Guild of America, the Book-of-the-Month Club, the Book League of America, the Doubleday One Dollar Book Club or any similar organization which operates on the basis of plate rental or purchase of Book Club rights (in full length, condensed or abridged versions). The Publisher shall pay to the Author Fifty per cent (50%) of the net proceeds of such sales.

9. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell to other publishers, including any corporation which is a subsidiary or affiliate of the Publisher's, the right to bring out a reprint edition of the work (in full length, condensed or abridged versions), which sale sixall provide that such reprints shall not appear on the market within one year after the date of trade publication. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales. The Publisher also has the right to publish a reprint edition of the work through its reprint divisions, and in the event a reprint edition is thus published through said reprint divisions, the Publisher shall pay to the Author one-half the amount which the reprint divisions shall credit to the Publisher on the books of account of the reprint divisions.

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in one part before book publication without the prior consent of the Publisher

10a. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work for publication in newspapers or periodicals in full-length, condensed or abridged versions in one-part before book publication. The Publisher shall pay to the Author Seventy-five per cent (75%) of the proceeds of such sales.

First Serial

11. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form in newspapers or periodicals before publication in book form. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of such sales (except on sales for serial publication in countries other than the United States under Paragraph 6 hereof).

Second Sorial

12. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form is newspapers or periodicals after publication in book form (provided such rights have not been retained by the purchaser of the first serial rights). The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

In making sales pursuant to Paragraphs 10, 11, and 12, the Publisher may deal directly with newspapers or periodicals or with those dealers in such literary rights commonly known as syndicates.

Permissions: Extracts Activities Abridged Version 13. The Author hereby grants and assigns to the Publisher, after publication of the work in book form, the right to sell extracts-therefrom for use in periodicals or books and condensed or abridged versions for use in periodicals (provided such rights have not been retained by the purchasers of the first serial rights) but not in book form except as provided in Paragraphs 6, 8 and 9. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

No payment shall be made to the Author by the Publisher for permission gratuitously given by the Publisher, before or after publication of the work in book form, to publish extracts from the work to benefit the sale thereof.

Motion Pictores Dramatization Public Readings 14. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell dramatic rights with or without music, public reading and other non-dramatic performing rights, and motion picture rights throughout the world in and to and in connection with the said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of such sales, except sound recording (see Paragraph 17). Any sales of the motion picture rights of the work may grant to the purchaser the right to publish, for advertising and exploitation of dramatizations and motion pictures based on the work, excepts, summaries and synopses of the work or dramatizations or motion pictures thereof, but no such excepts, summaries and synopses of the work or dramatizations or motion pictures thereof, but no such excepts, summaries or synopses shall exceed 7,500 words in length, nor shall they appear as having been written by the Author, nor shall they be offered to any person, firm or corporation for a monetary consideration.

Redie Televisies 15. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell radio and television rights, throughout the world, in and to and in connection with said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of sales of the work for adaptation for radio and television.

Commercial Rights 16. The Author grants and assigns to the Publisher the sole and exclusive right to sell, and to license others to sell, subject to the approval of the Author, the commercial rights in and to the Author's name and the work during the period of this agreement. "Commercial Rights" shall be understood to mean the exploitation of the Author's name in connection with the work, and of the work itself and all material contained therein through their use, simulation or graphic exploitation on or in connection with merchandise. The Publisher shall pay to the Author Fifty per cent (50%) of the net proceeds of such sales.

Sound Recording Microfilm Pilantrips Tooching Machine 17. The Author hereby grants and assigns to the Publisher the sele and exclusive right to sell the work or parts of it for (a) sound recording, including phonographic, wire and tape recording, or any other method now or hereafter known or devised; (b) microfilm; (c) filmstrips; (d) programs for machine teaching. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sale:

Rights Not Specified

18. All rights not herein specifically granted to the Publisher are reserved by the Author.

Semi-Annual Accounting 19. Statements of sales shall be made up by the Publisher semi-annually as of April thirtieth and October thirty-first, and delivered and settled within four months thereafter. Where any such statement or any other record of account between the Author and the Publisher indicates that the work has not earned the amount of royalities advanced, or that the Author has received an overpayment of royalities or is otherwise indebted to the Publisher, the Publisher may deduct the amount of such uncarned royalities, overpayment or other indebtedness from any sums then or thereafter due the Author from the Publisher under this agreement. In its sales accounting statement, the Publisher may set up a reserve which in its opinion will allow for returns during the two royalty accounting periods following the period in which publication occurs. This reserve shall not exceed fifteen per cent (15%) of earnings accrued to the Author in the respective royalty periods.

The Publisher shall on the written account of the Author cause the public accountance resolution.

The Publisher shall, on the written request of the Author, cause the public accountants regularly employed by the Publisher to furnish to the Author a copy of his latest semi-annual royalty statement which will bear the stamp of the firm of accountants.

Any sums paid to the Author shall be returned to the Publisher on demand if said manuscript is not delivered as specified in Paragraph 4 bereof.

Author's Copies

20. The Publisher shall furnish to the Author, free of charge, ten copies of the regular trade edition of the work as published; and should the Author desire any more copies for personal use, they shall be supplied at one-half the retail price. Copies thus purchased shall not be resold.

Discontinuaces of

21. The Publisher in its discretion may at any time determine to discontinue the publication of the work without prejudice to its rights hereunder. In that event, it shall give notice of such determination to the Author by registered mail at the address last given by him. Within thirty days after the mailing of such notice the Author shall have the right to purchase from the Publisher at cost any existing sheet and bound stock which is the unrestricted property of the Publisher. Upon making such purchase the disposition of rights hereunder shall be by mutual agreement.

Verified Copies of Sab-Agreements 22. The Publisher undertakes, upon request, to furnish to the Author verified copies of any agreements which the Publisher may make with any third party for the disposition of any rights in the work granted to the Publisher.

Governmente Restriction or War 23. The performance of the Publisher pursuant to this agreement is subject to governmental restrictions on essential materials and supplies, acts of war, strikes or other conditions beyond the control of the Publisher.

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24. In case of bankruptcy, receivership, or assignment for benefit of creditors of the Publisher, the right of publication shall revert to the Author and thereupon this agreement shall terminate but the Author shall have the right to buy back any remaining copies or sheets at a fair market value, to be determined by agreement.

25. Regardless of the place of its actual execution and delivery, this agreement shall be treated as though executed within the State of New York, and shall be governed by the laws and statutes thereof.

26. This agreement shall be binding upon and shall inure to the benefit of the heirs, executors or administrators of the Author and any successor in business of the Publisher, but neither party shall otherwise separately sell or assign his or its interests in this agreement without the written consent of the other. In the event of any such assignment by the Publisher, the Author shall nevertheless remain liable to the Publisher (as well as to the assignee) on each of his obligations under Paragraph 1 of this agreement.

27. The Author hereby agrees that the Publisher shall have the first option to publish the Author's next full-length book, but in no case shall the Publisher be required to exercise this option within three months following publication of the work the subject of this agreement.

28. This agreement shall not be binding upon either the Publisher or the Author unless it is signed by both parties and delivered to the Publisher within a period of two months from the date of the agreement.

29. This agreement contains the whole understanding of the parties, supersedes all previous oral or written representations or agreements and may not be changed, modified or discharged orally. Any modification, change or discharge of this agreement must be in writing and signed by the Publisher.

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The Dolphin Books Edition is the first publication of Zolar's Family Horoscope 1964 Edition

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First Edition

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AGREEMENT made this 27 x 15th day of Cold hid G of play, Loc. 17 x 15th day of the Lock, No. 200.

(hereinafter referred to as the

"Seller") and Paperback Library, Inc. of 315 Park Avenue South, New York 10, N.Y. (hereinafter referred to as "Publisher").

WITNESSETH:

WHEREAS, the Seller has heretofore published the trade edition of a book entitled:

> written by XXXXX Zolar

WHEREAS, the parties hereto are mutually desirous of having Paperback Library, Inc., publish a reprint edition of said book;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto do hereby agree as follows:

Reprint Publication License

1. The Seller hereby grants to Publisher the sole and exclusive license to manufacture, publish and sell in the United States and its dependencies, the Philippines, and Canada and a non-exclusive license in the Open Market (Open Market is territory other than the United States and its dependencies, the Philippines, the British Commonwealth of Nations and the Free State of Ireland) a paperback English-language reprint edition of said book having a retail price of One Dollar Fifty Cents (\$1.50) per copy or less, such retail price to be determined by Publisher.

Regardless of the stated non-exclusivity of the Open Market license, the Seller agrees that insofar as it controls such rights, it will not license other publishers, no matter where located, to publish and sell in the Open Market any edition which would be reserved to Publisher under this agreement in the exclusive market unless said rights are a part of a grant of British Empire rights to a British publisher. (In the event of making such a grant to a British publisher, the Selier agrees to use its best efforts to obtain a similar restriction from the British publisher.)

Term

2. Said license shall continue for a period of five (5) years from the date of Publisher's first publication and subsequently until terminated by the Seller. Such notice of termination may be given by the Seller at any time, to be effective six (6) months thereafter but not earlier than the end of said (5) year period. If Publisher fails to keep the book in print during the term of this agreement and fails to reprint the book within six (6) months after written request from the Seller to do so (unless prevented from doing so by circumstances beyond its control), then the Seller may terminate this agreement by written notice to Publisher. In-the event Publisher-puts-into-processes a paintsing of said book during the license term and prior to its receipt of any termination notice, the license term shall thereby be extended for a posied or wo years from the date of publication of such practing:

Upon the effective date of termination, all rights granted hersunder shall revert to the Seller except that Publisher shall continue to have the right to sell any books previously printed, subject to the payment of royalties as hereinafter set forth.

Earliest Date of Publication 3. Publisher agrees not to publish its edition of said book earlier than I...I July 1, 1070 for later than July, 1971
Publisher may, however, publish its edition at or about the time of the first scheduled release of a motion picture based on the book.

Delays

4. Publisher shall not be responsible for delays caused by war, riot, strikes, fires, floods, acts of God, governmental restrictions, shortage or interruption of manufacturing or marketing facilities or materials supply, or other similar or dissimilar circumstances beyond its control.

Guaranty and Royalties 5. Publisher agrees to pay to the Seller the sum of Two Thousened Pive Lambrid Dollars (\$5.00.00) on*

to be applied against royalties to be earned at the following rates, based upon retail sales less a reasonable reserve against returns. Publisher shall have the right to merchandise said book on a fully returnable basis and royalties shall be payable only on net sales.

| For an edition selling at | 50¢ | 60¢ | 75¢ | |
|---|----------|----------------|----------|--|
| | Per Copy | Per Copy | Per Copy | |
| on the first 150,000 copies sold in the U.S. and in its | | | | |
| dependencies and in the | 3,5 | 3.64 | 4.54 | |
| Philippines | 群 | . 2 774 | £7 | |
| on additional copies over | | | | |
| 150,000 sold in the U.S. and in its dependencies and in | 2.4 | 4384 | 6¢ | |
| the Philippines | 好 | 3500 | 400 | |
| on all copies sold in | 34 | 3.6/ | 4.54 | |
| foreign countries | 2\$ | .BC04 | 90 | |

(and proportionately for variations in retail price) except as hereinafter provided with respect to copies sold as "premiums" or "remainders."

Until earned royalties equal the amount of any guaranty payable hereunder Publisher may deduct and retain the difference between such guaranty and the earned royalties on said book from royalties earned on any other book or books by the same Author as to which there is an agreement between the Seller and Publisher.

Reports and Payments 6. Publisher shall render statements of sales as of June 30th and December 31st of each year and shall mail the same and make payments thereunder on or before September 30th for the six-month period ending the preceding June 30th, and on or before March 31st for the six-month period ending the preceding December 31st, or alternately Publisher shall render such statements as of the six-month period after the end of the month in which publication took place and as of each six-month period thereafter and shall mail such statements and make payments thereunder within three months thereafter.

Trade Edition and Copyright Notices 7. The Seller agrees to furnish forthwith without cost to
Publisher six copies of the trade edition of said book and Publisher
agrees to reprint the text of said book in any edition which it publishes.
Publisher, at its option, may include any introduction, index or like
material or any illustrations from the jacket or text of the trade edition. Publisher agrees to print on the copyright page of the book the
copyright notices as contained in the said trade edition or any other
copyright notices furnished in writing by the Seller.

*:1250.00 within 30 days after signing this agreement .:1250.00 en publication

Guaranty acainst Libel, etc.

8. The Seller warrants that it owns the publishing rights to said book which are granted hereunder and that said rights are not Infringement, subject to any prior agreement, lien or other right which may interfere with the rights of Publisher under this agreement. The Seller further warrants that said book contains no libelous or other unlawful matter, and that it in nowise infringes upon the copyright or violates any other right of any person or party and it agrees to hold Publisher harmless against any claim, demand, action, or proceeding which may be brought or had against Publisher, its distributors or sub-distributors, including counsel fees incurred, by reason of any libelous or other unlawful matter contained in said book or any violation therein of copyright or any other right. The Seller further warrants that said book contains no obscene matter and agrees to hold Publisher harmless of any expenses incurred by Publisher, including counsel fees, in connection with any claim, demand, action, or proceeding agains; Publisher or any other person, firm or corporation selling said book, by reason of any allegedly obscene matter contained in said book. In defending any such claim, demand, action or proceeding, Rubbishor shall have the right to select counsel. The foregoing warranties and indemnities shall survive the termination of this agreement. 1

the Seller

Conflicting Publication

9. The Seller agrees that during the term of this agreement it will not, without the prior written consent of Publisher, publish or permit to be published by any party other than Publisher any edition of said book which will retail at One Dollar Fifty Cents (\$1.50) or less per copy, nor will it publish or permit to be published in book form any abridgement or condensation or adaptation of the book in any edition or of a play bearing a like title selling at One Dollar Fifty Cents (\$1.50) or less per copy. 2

Remainders bns Premiums

10. The royalty payable on overstock copies sold to commercial firms for use Br resale by them in connection with the sale of their own products shall be 5% of the net amount received by Publisher except that as to any copies thus sold at cost or less, no royalty shall be payable. Publisher may publish a special edition for commercial premium use or for the use of the Teen Age Book Club (or any similar enterprise), in which event the royalty payable

no such edition may be undertaken without the written consent of the Seller.

Changes in the book

li. Publisher shall have full authority to determine the appearance and promotion of the book. Publisher may make any changes, corrections or abridgements of the book or its title that it deem necessary or desirable, but not without the written consent of the Seller. Such consent shall not be unreasonably withheld.

Application of Laws

22. This agreement shall be interpreted according to the laws of the State of New York, regardless of the place of its execution, and may not be modified orally.

No Assignment Without Consent

13. This agreement may not be assigned by either of the parties hereto without the written consent of the other, except that Publisher shall have the right to permit publication of the book in the various parts of the world licensed herein under the imprint of any subsidiary company.

1. The foregoing warranties and indemnities are confined solely to the repreduction of the content and the context of the Schler's edition of the book and shall under no circumstances apply to any claim, litigation or loss occasioned, influenced or contributed to by any other material or treatment.

2. insofar as such rights are controlled by the Seller. This does not apply to anthology permission, magazine or newspaper use, or to sales to or through book clubs.

3. after having obtained approval from the Seller

IN WITNESS WHERFOF, the parties hereto have duly executed this agreement the day and year set forth above.

| | Selier |
|----------------------------|-------------------------|
| Witness: Judill W. Grad | dy By Kindly fle |
| Witness: | PAPERBACK LIBRARY, INC. |
| •••••• | (title) Publisher |

14. The Publisher agrees to submit jacket design and all jacket and promotion copy as well as finished art work for the Publisher's edition of said book for approval to the seller, allowing ample time for consultation and submission to the author or agent where necessary. The Seller agrees that such approval shall not be unreasonably withheld.

---: BFT. EX. B (12) 4-21-72

P21 to 80/10/21

Memorandum of Agreement made this 21st day of 19 63 January . between Doubleday & Company, Inc., of Garden City, N. Y., hereinafter called "the Publisher," and

Zolar Publishing Company Inc. 33 West 60th Street New York City

bereinafter called "the Author," being the Author Proprietor of a work at present entitled

ZCLAR'S OFFICIAL DREAM DICTIONARY AND ENCYCLOPEDIA,

Warranty and

hereinafter called "the work."

1. The Author represents and warrants to the Publisher: (a) that the work is original; (b) that the is the sole author and proprietor thereof, and has full power to enter into this agreement; (c) that the work has not heretofore been published in whole or in part in volume form and that he has not entered into or become subject to any contract, agreement or understanding with respect thereto other than this agreement; (d) that if published it will not infringe upon any proprietary right at common law, or any statutory copyright, or any other right whatsoever; and (e) that it is innocent, and contains no matter whatsoever that is obscene, libelous, in violation of any right of privacy, or otherwise in contraversion of law. The Author shall indemnify and hold the Publisher harmless from any ciain, demand, suit, action, proceeding or prosecution (and any liability, loss, expense or damage in consequence thereof) asserted or instituted by reason of the publication or sale of the work or the Publisher's exercise or enjoyment of any of its rights under this agreement, or by reason of any warranty or indemnity made, assumed or incurred by the Publisher in connection with the exercise of any of its rights under this agreement. The Publisher shall have the right either to defend such claim, demand, suit, action, proceeding or prosecution by counsel of its selection or, with the consent of the Author, to settle the same on such terms as it deems advisable holding the Author accountable for Fifty per cent (50%) of the amounts such terms as it deems advisable holding the Author accountable for Fifty per cent (50%) of the amounts such terms as it deems advisable holding the Author short liability to the Publisher, the aforesaid inclaim, demand, cuit, action, proceeding or prosecution without liability to the Publisher, the aforesaid inclaim, demand, cuit, action, proceeding or prosecution without liability to the Publisher, the aforesaid inclaim, demand, cuit, action, proceeding or prosecutio

In the event of a breach of any of the Author's foregoing warranties or any default by the Author in the performance of his aforesaid indemnities the Publisher may at its election and without prejudict to any other right or remedy against the Author terminate this agreement and in such event, the Author shall forthwith repay to the Publisher any advance against earnings or other sums theretofore paid to the Author by the Publisher.

Territory

2. The Author grants and assigns to the Publisher the exclusive right to print, publish, copy and wend the work and the other rights hereinafter referred to on the terms set forth, throughout the world.

The Author hereby requests and authorizes the Publisher to engage Doubleday Canada Limited to publish the work in Canada, with the same force and effect as if the Author had himself engaged Doubleday Canada Limited so to publish.

3. The Publisher is hereby expressly authorized and agrees to take out copyright in the name of

3. The Publisher is hereby expressly authorized and agrees to take out copyright in the name of the Author
and to take all steps required to secure said copyright in the United States and is authorized in its discretion to take out copyright in such other countries as may be covered by this agreement. The Author agrees to apply for the renewal of said copyright on the expiration of the first term thereof, and authorizes the Publisher to make such application in his name. The Author further agrees to assign to the Publisher, if this agreement has not terminated previously, the sole and exclusive right to print, publish, copy and vend the work, and the other rights referred to hereinafter, during the full term of said renewal, on the same terms and conditions as for the original copyright term.

The Author hereby authorizes the Publisher to make the Author a co-plaintiff with the Publisher in any litigation against a third party for infringement of the copyright on the work, but without cost to the Author. Any recovery from such litigation shall first be applied to wimburse the Publisher for its expenses in connection therewith, and the balance shall be divided equally between the Author and the Publisher.

4. The Author shall deliver to the Publisher two (2) finally revised copies of the work, satisfactory to the Publisher in content and form, including all illustrations and other graphic material essential to the work, in a form ready for reproduction, not later than (1n hand) after proof is available for making the index. If the Author fails to supply all such index, illustrations and other graphic material in a form ready for reproduction, the Publisher may obtain it and charge the expense thereof against the Author's earnings hereunder. It is understood that such material is considered a part of the work and that all rights granted to the Publisher hereunder apply also to use of such material. The provisions of this clause as to the character, condition and time of receips of such copy are of the essence of the agreement, and in the event of the Author's default hereunder the Publisher may, at its option, any time prior to actual publication of the work, terminate this agreement without prejudice to any other remedy.

to any other remedy.

Expense of the Author's proof corrections exceeding Ten per cent (10%) of cost of composition shell be charged against the Author's earnings hereunder.

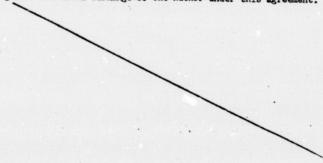
Publication

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Other Export Markets (c) On all copies of the regular trade edition of the work sold by the Publisher to other export markets, an amount equal to Eight per cent (8%) of the United States retail price.

Mell Order

(d) On all ce_i ies of the work sold by the Publisher (less returns) through a special offer made by its Mail Order Department, as distinct from sales made to bookstores or jobbers, Five per cent (5%) of the Mail Order retail price, exclusive of shipping and handling charges.

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Pablishing Rights Outside U.S.A. & Transiztions 6. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell English language and translation rights in and to the work in book or serial form (in full-length, condensed or abridged versions) for publication in countries other than the United States. The Publisher shall pay to the Author Seventy-five per cent (75%) of the net proceeds of such sales.

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7. If the Publisher has a stock on hand which, in its judgment, could not be sold on usual terms in a reasonable time, it may sell such copies to any purchaser or purchasers, including the Publisher's subsidiaries, at the best price it can secure. If such stock is sold at or below the Publisher's cost, no royalty shall be paid to the Author on such sales. If such copies are sold above the Publisher's cost, the royalty paid to the Author (in lieu of the royalty set forth in Paragraph 5 hereof) shall be Ten per cent (10%) of the revenue obtained from such sales.

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8. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell a Book Club edition of the work to the Literary Guild of America, the Book-of-the-Month Club, the Book League of America, the Doubleday One Dollar Book Club or any similar organization which operates on the basis of plate entail or purchase of Book Club rights (in full length, condensed or abridged versions). The Publisher shall-pay to the Author Fifty per cent (50%) of the net proceeds of such sales.

Reprints

9. The Author hereby grants and assigns to the Piolisher the sole and exclusive right to sell to other publishers, including any corporation which is a subsidiary or affiliate of the Publisher's, the right to bring out a reprint edition of the work (in full length, condensed or abridged versions), which sale shall provide that such reprints shall not appear on the market within one year after the date of trade publication. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales. The Publisher also has the right to publish a reprint edition of the work through its reprint divisions, and in the event a reprint edition is thus published through said reprint divisions, the Publisher shall pay to the Author one-half the amount which the reprint divisions shall credit to the Publisher on the books of account of the reprint divisions.

One-Port Magazine Publication

- 10. The Author may not sell the work for publication in full-lungth, condensed or absidged vertions in one part before book publication without the prior consent of the Publisher.
- 10a. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work for publication in newspapers or periodicals in full-length, condensed or abridged versions in one-part before book publication. The Publisher shall pay to the Author Seventy-five per cent (75%) of the proceeds of such sales.

First Serie

11. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form in newspapers or periodicals before publication in book form. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of such sales (except on sales for serial publication in countries other than the United States under Paragraph 6 hereof).

Second Serial

12. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell, in the territory specified in Paragraph 2 hereof, the work or parts of it for publication in serial form in newspapers or periodicals after publication in book form (provided such rights have not been retained by the purchaser of the first serial rights). The Publisher shall pay to the Aut for Fifty per cent (50%) of the proceeds of such sales.

In making sales pursuant to Paragraphs 10, 11, and 12, the Publisher may deal directly with newspapers or periodicals or with those dealers in such literary rights commonly known as syndicates.

Permissions: Extracts Anthologies Abridged Versions 13. The Author hereby grants and assigns to the Publisher, after publication of the work in book form, the right to sell extracts therefrom for use in periodicals or books and condensed or abridged versions for use in periodicals (provided such rights have not been retained by the purchasers of the first serial rights) but not in book form except as provided in Paragraphs 6, 8 and 9. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

No payment shall be made to the Author by the Publisher for permission gratuitously given by the Publisher, before or after publication of the work in book form, to publish extracts from the work in benefit the sale thereof.

Motion Pictures Dramatization Public Readings 14. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell dramatic rights with or without music, public reading and other non-dramatic performing rights, and motion picture rights throughout the world in and to and in connection with the said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of s.ch sales, except sound recording (see Paragraph 17). Any sales of the morion picture rights to fit work may grant to the purchaser the right to publish, for advertising and exploitation of dramatizations and motion pictures based on the work, excerpts, summaries and synopses of the work or dramatizations or motion pictures thereof, but no such excerpts, summaries or synopeses thall exceed 7,500 words in length, nor shall they appear as having been written by the Author, nor shall they be offered to any person, firm or corporation for a monetary consideration.

Redio Television 15. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell radio and television rights, throughout the world, in and to and in connection with said work. The Publisher shall pay to the Author Ninety per cent (90%) of the proceeds of sales of the work for adaptation for radio and television.

Commercial Rights 16. The Author grants and assigns to the Publisher the sole and exclusive right to sell, and to license others to sell, subject to the approval of the Author, the commercial rights in and to the Author's name and the work during the period of this agreement. "Commercial Rights" shall be understood to mean the exploitation of the Author's name in connection with the work, and of the work itself and all material contained therein through their use, simulation or graphic exploitation on or in connection with merchandise. The Publisher shall pay to the Author Fifty per cent (50%) of the net proceeds of such sales.

Sound Recording Microtolm Filmstrips Toaching Machines 17. The Author hereby grants and assigns to the Publisher the sole and exclusive right to sell the work or parts of it for (a) sound recording, including phonographic, wire and tape recording, or any other method now or hereafter known or devised; (b) microfilm; (c) filmstrips; (d) programs for machine teaching. The Publisher shall pay to the Author Fifty per cent (50%) of the proceeds of such sales.

Rights Not Specified 18. All rights not herein specifically granted to the Publisher are reserved by the Author.

Semi-Assuci

19. Statements of sales shall be made up by the Publisher semi-annually as of April thirtieth and October thirty-first, and delivered and settled within four months thereafter. Where any such statement or any other record of account between the Author and the Publisher indicates that the work has not earned the amount of royalties advanced, or that the Author has received an overpayment of royalties or is otherwise indebted to the Publisher, the Publisher may deduct the amount of such unearned royalties, overpayment or other indebtedness from any sums then or thereafter due the Author from the Publisher under this agreement. In its sales accounting statement, the Publisher may set up a reserve which in its opinion will allow for returns during the two royalty accounting periods following the period in which publication occurs. This reserve shall not exceed fifteen per cont (15%) of earnings accrued to the Author in the respective royalty periods.

The Publisher shall, on the written request of the Author, cause the public accountants regularly employed by the Publisher to furnish to the Author a copy of his latest semi-annual royalty statement which will bear the stamp of the firm of accountants.

Any sums prid to the Author shall be returned to the Publishes on demand if said manuscript is not delivered as specified in Paragraph 4 hereof.

Author's Copies

20. The Publisher shall furnish to the Author, free of charge, ten copies of the regular trade edition of the work as published; and should the Author desire any more copies for personal use, they shall be supplied at one-half the retail price. Copies thus purchased shall not be resold.

Publication of Publication

21. The Publisher in its discretion may at any time determine to discontinue the publication of the work without prejudice to its rights hereunder. In that event, it shall give notice of such determination to the Author by registered mail at the address last given by him. Wi hin thirty days after the mailing of such nocice the Author shall have the right to purchase from the Publisher at cost any existing sheet and bound stock which is the unrestricted property of the Publisher. Upon making such purchase the disposition of rights hereunder shall be by mutual agreement.

rified Copies Seb22. The Publisher undertakes, upon request, to furnish to the Author verified copies of any agreements which the Publisher may make with any third party for the disposition of any rights in the work granted to the Publisher.

Soveramente Zostriction or War 23. The performance of the Publisher pursuant to this agreement is subject to governmental restrictions on essential materials and supplies, acts of war, strikes or other conditions beyond the control of the Publisher.

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Bonkrepts

24. In case of bankrupacy, the vership, or assignment for benefit of creditors of the Publisher, the right of publication shall revert to a Author and thereupon this agreement shall terminate but the Author shall have the right to be determined by agreement.

Place of

25. Regardless of the place of it actual execution and delivery, this agreement shall be treated as though executed within the dirate of New York, and shall be governed by the laws and statutes thereof.

Heirs and Assigns

26. This agreement shall be binding upon and shall inure to the benefit of the heirs, executors or administrators of the Author and any successor in business of the Publisher, but neither party shall otherwise separately sell or assign his or its interests in this agreement without the written consent of the other. In the event of a remain label to the Publisher (as well as to the assignee) on each of his obligations under Paragraph 1 of this agreement.

Ontine

27. The Author hereby agrees that the Publisher shall have the first option to publish the Author's next full-length book, but in me case shall the Publisher be required to exercise this option within three months following publication of the work the subject of this agreement.

Limitatio

28. This agreement shall not be binding upon either the Publisher or the Author unless it is signed by both parties and delivered to the Publisher within a period of two months from the date of the agreement.

Whole

29. This agreement contains the whole understanding of the parties, supersedes all previous oral or written representations or agreements and may not be changed, modified or discharged orally. Any modification, change or discharge of this agreement must be in writing and signed by the Publisher.

Witness to signature of Author-Proprietor:

Witness to signature of Publisher:

Touth Marzen

AUTHOR PROPRIETOR

Zolar Publishing Company Inc.

DOUBLEDAY & COMPANY, INC.

butmalableday

DOUBLEDAY & COMPANY, INC. Publishers

(U)

Any

RS

277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000 April 9, 1965

Nr. Eruce King Zolar Fublishing Company 33 West 60th Street New York, New York 10023

Re: ZOLAR'S ENCYCLOFEDIA AND DICTIONARY OF DEEAMS, by Zolar.

Dear Hr. King:

This letter, when signed by Zolar Publishing Company and countersigned by Doubleday & Company, Inc., will serve as an agreement concerning publication rights in ZOLAR'S EMCYCLOPMDIA AND DICTIONARY OF DELAMS, by Zolar, which was the subject of an agreement between us dated January 21, 1963.

- 1. We grant to you the right to publish a hardcover edition of the Work in the English language, at a price not less than \$2.00 per cepy, in the United States, Canada and the Fhilippine Islands; territory other than the U.S.A., the Fhilippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language.
- 2. All other rights granted to us under the agreement of January 21, 1963 for the publication of the above Work, remain in our sole and exclusive possession.
- 3. It is understood and agreed that you have purchased the remaining copies of the regular trade edition of the Work at 87¢ per copy and that no royalties are to be paid to you on the copies thus purchased.
- 4. If, however, within six (6) months from date of this letter, we have made no sale of the reprint rights to the work in the United States, Canada and the Philippine Islands; territory other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language, you may then request that such rights be reverted to you, at which time we will consider your request.

If the above is to your understanding and agreement, please sign this letter and return both copies to us for our countersignature. One copy will then be sent to you for your records.

Sincercly yours,

LeBaron R. Barker, Jr.

AGREED: 20LAR FUBLISHING CCHEANY

Bruce King

DOUBLEDAY & COMPANY, INC.

Chilan Doubleday

JS

PAPERBACK LIBRARY, INC.

AGREEMENT mode this 24th

day of April

between 1969

Doubleday & Co. pany, Lac.

(hereinafter referred to as "Publisher").

277 Fank Avenue

Rey York, U.Y. 10017

(hereinafter referred to as the "Seller") and Pape, back Library, Inc. of 315 Park Avenue South, New York 10, N.Y.

WITNESSETH:

WHEREAS, the Seller has heretofore published the trade edition of a book entitled:

ZOLAR'S ENCYCLOPEDIA AND DIGTIONARY OF DREAMS

written by

2.01..W

WHEREAS, the parties hereto are mutually desirous of having Paperback Library, Inc., publish a reprint edition of said book;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto do hereby agree as follows:

Reprint Publication License

1. The Seller hereby grants to Publisher the sole and exclusive license to manufacture, publish and sell in the United States and its dependencies, the Philippines, and Canada and a non-exclusive license in the Open Market (Open Morket is territory other than the United States and its dependencies, the Philippines, the British Commonwealth of Nations and the Free State of Ireland) a paperback English-language reprint edition of said book having a retail price of One Dollar Fifty Cents (\$1.50) per copy or less, such retail price to be determined by Publisher.

Regardless of the stated non-exclusivity of the Open Market license, the Seller agrees that insofar as it controls such rights, it will not license other publishers, no matter where located, to publish and sell in the Open Market any edition which would be reserved to Publisher under this agreement in the exclusive market unless said rights are a part of a grant of British Empire rights to a British publisher. (In the event of making such a grant to a British publisher, the Seller agrees to use its best efforts to obtain a similar restriction from the British publisher.)

Term

2. Said license shall continue for a period of five (5) years from the date of Publisher's first publication and subsequently until terminated by the Seller. Such notice of termination may be given by the Seller at any time, to be effective six (6) menths thereafter but not earlier than the end of said (5) year period. If Publisher fails to keep the book in print during the term of this agreement and fails to reprint the book within six (6) months after written request from the Seller to do so (unless prevented from doing so by circumstances beyond its control), then the Seller may terminate this agreement by written notice to Publisher. hethe-event-Fublisher puts into-preciese-s-printing-of-said, book-during-the-license-term-and-prior-to-its-receipt-of-eny termination notice, the licer so tormehall thereby, be extended for a period of two year's front the date of publication of such printing.

Upon the effective date of termination, all rights granted hereunder shall revert to the Seller except that Publisher shall continue to have the right to sell any hooks previously printed, subject to the payment of royalties as hereinafter set forth, on the understanding that perfullipher will sell such copies within two years thereafter.

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MENRY S. CREAMER, GEO

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Earliest Date of Publication 3. Publisher agrees not to publish its edition of said book earlier than September 1, 1969 nor later than September 1, 1970. Publisher may, however, publish its edition at or about the time of the first scheduled release of a motion picture based on the book.

Delays

4. Publisher shall not be responsible for delays caused by war, riot, strikes, fires, floods, acts of God, governmental restrictions, shortage or interruption of manufacturing or marketing facilities or materials supply, or other similar or dissimilar circumstances beyond its control.

Guaranty and Royalties 5. Publisher agrees to pay to the Seller the sum of
Three Thousend Bollars

Dollars (\$ 3,000.00) ong
to be applied against royalties to be
earned at the following rates, based upon retail sales less a reasonable reserve against returns. Publisher shall have the right to merchand so said book on a fully returnable basis and royalties shall be
payable only on net sales. The \$1,500.00 due on publication must

| be paid not later than 9/1 For an edition selling at | .//0. 50¢ | 60¢ | 75¢ |
|--|--------------|----------|----------|
| For an edition senting.ac | Per Copy | Per Copy | Per Copy |
| on the first 150,000 copies sold in the U.S. and in its dependencies and in the Philippines | . 3¢ | 3.60 | 4.5¢ |
| on additional copies over 150,000 sold in the U.S. and in its dependencies and in the Philippines | å¢. | 4.8¢ | 62.54 |
| on all copies sold in | . <u>3</u> ç | 3.60 | 4,50 |

(and proportionately for variations in retail price) except as hereinafter provided with respect to copies sold as "premiums" or "remainders."

Until-earned royalties equal the amount of any guaranty-payable hencunder Publisher may deduct and retain the difference between such guaranty and the earned royalties on said book from royalties earned on any other book or books by the same Author as to which there is an agreement between the Seller and Publisher.

Reports and Payments

6. Publisher shall render statements of sales as of June 30th and December 31st of each year and shall mail the same and make payments thereunder on or before September 30th for the six-month period ending the preceding June 30th, and on or before March 31st for the six-month period ending the preceding December 31st, or alternately Publisher shall render such statements as of the six-month period after the end of the month in which publication took place and as of each six-month period thereafter and shall mail such statements and make payments thereunder within three menths thereafter.

Trade Edition and Copyright Notices

Publisher six copies of the trade edition of said book and Publisher six copies of the trade edition of said book and Publisher agrees to reprint the text of said book in any edition which it publishes.

Publisher, at its option, may include any introduction, index or like material or any illustrations from the jacket or text of the trade edition? Publisher agrees to print on the copyright page of the book the copyright notices as contained in the said trade edition or any other INTUM.

\$1,500.00 within 30 days after signing of this agreement \$1,500.00 on publication

an provided such interial is the property of the Seller.

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Guaranty against Infringement, Libel, etc.

E. The Seller warrants that it owns the publishing rights to said book which are granted hereunder and that said rights are not subject to day prior agreement, lien or other right which may interfers with the rights of Publisher under this agreement. The Seller further warrants that said book contains no libelous or other unlawful matter, and that it in nowise infringes upon the copyright or violetes any other right of any person or party and it agrees to hold Publisher harmless against any claim, demand, action, or proceeding appearance which may be brought or had against Publisher, its distributors or sub-distributors, including counsel fees incurred, by reason of any libelous or other unlawful matter contained in said book or any violation therein of copyright or any other right. The Seller further warrants that said book contains no obscene matter and agrees to hold Publisher harmless of any expenses incurred by Publisher, including counsel fees, in connection with any claim, demand, action, or proceeding against Publisher or any other person, firm or corporation selling said book, by reason of any allegedly obscene matter contained in said book. in defending any

such clairs, demand, action or proceeding, Pablisher shall have the right to select counsel. The foregoing warranties and indemnities shall survive the termination of this agreement.



the Seller

Conflicting Publication

9. The Seller agrees that during the term of this agreement it will not, without the prior written consent of Publisher, publish or permit to be published by any party other than Publisher any edition of said book which will retail at One Dollar Fifty Cents (\$1.50) or less per copy, nor will it publish or permit to be published in book form any abridgement or condensation or adaptation of the book in any edition or of a play bearing a like title selling at One Dollar Fifty Cents (\$1.50) or less per copy.

Remainders and Premiums

Changes in the book

10. The royalty payable on overstock copies sold to commercial firms for use or resale by them in connection with the sale of their own products 3shall be 5% of the net amount received by Publisher except that as to any copies thus sold at cost or less, no royalty shall be payable. Publisher may publish a special edition for commercial premium use or for the use of the Teen Age Book Club (or any similar enterprise), in which event the royalty payable shall be 5% of the netramount received as specified in Clause 5, but no such edition may be undertaken without the written consent of the Seller.

11. Publisher shall have full authority to determine the appearance and promotion of the book. Publisher may make any changes, corrections or abridgements of the book or its title that it deem necessary or desirable, but not without the written consent of

Such consent shall not be unreasonably withheld. the Seller. Application of Laws

12. This agreement shall be interpreted according to the laws of the State of New York, regardless of the place of its execution, and may not t or diffied orally.

No Assignment Without Consent

13. This agreement may not be assigned by either of the parties hereto without the written consent of the other, except that Publisher shall have the right to permit publication of the book in the various parts of the world licensed herein under the imprint of any subsidiary company.

The foregoing warranties and indemnities are confined solely to the reproduction of the content and the content of the Seller's edition of the book and . shall under no circumstances apply to any claim, litigation or loss occasional influenced or contributed to by any other material or treatment.

insofar as such mights are controlled by the Seller. This does not apply to anthology permission, magazine or newspaper use, or to sales to or through book clubs.

3 after having obtained approval from the Seller



IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the day and year set forth above.

> DOUBLEDAY & COMPANY, INC. Seller

Witness:

Witness:

PAPERBACK LIBRARY, INC.

ich My By. (title) Publisher

14. The Publisher agrees to submit jacket design and all jacket and promotion copy as well as finished art work for the Publisher's edition of said book for approval to the Seller, allowing ample time for consultation and submission to the author or agent where . necessary. The Seller agrees that such approval shall not be unreasonably withheld.

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DOUBLEDAY & COMPANY, INC. Publishers



277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000

March 26, 1970

Mr. Bruce King Zolar Publishing Company 33 West 60th Street New York, New York

Dear Mr. King:

I have checked through our contract files and I can find no document which would indicate that reprint rights on ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS have been reverted to you. These rights were granted to us in the agreement of January 21, 1963, which provides for our publication of the work. It would appear that these rights are still controlled by Doubleday and that our arrangement with Paperback Library for its publication of a reprint edition of the work is entirely in order. If you have information which you feel makes the situation otherwise, I would be glad to consider it. If you are in agreement with our position, please let me know and I'll see that the royalty statement, along with a check for the amount of \$670.01, the amount due at the end of royalty period ended October 31, 1969, is again sent to you.

Our Subsidiary Rights Department was, in fact, alarmed to discover that there is in print a \$2.95 paperback edition of the work published under your own imprint. As we continue to control reprint rights on the work, we feel this publication is in violation of our agreement and some accounting should be made to us for this publication.

Sincerely yours,

bones A. Fry

James A. Fox Business Manager

Trade Publishing Division

JAF:sp cc: Ted Macri Lee Barker

PARINISHE FOR IDENT

APR 25 1972

HENRY S. CREAMER, C.S.R.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

Plaintiff, : Index No. 71 Civ. 2061

-against-

AFFIDAVIT IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

DOUBLEDAY & COMPANY, INC., CORONET COMMUNICATIONS INC. and INDEPENDENT NEWS CO., INC.,

Defendants.

STATE OF NEW YORK COUNTY OF NEW YORK) SS.:

BRUCE KING, being duly sworn, deposes and says:

- 1. I am the President of the plaintiff herein and have personal knowledge of each of the matters hereinafter referred to.
- 2. In answering the defendants' moving papers, I note that their supporting affidavit has been submitted by one of their attorneys who, of my own personal knowledge, prior to the commencement of this action, never had any contact with me whatsoever or with the plaintiff herein with respect to the facts at issue, and any attempt on his part to set forth facts, other than those stated in the exhibits annexed to the moving papers or in the depositions, is, in my opinion, hearsay, particularly since they are not supported by affidavits from any of the parties with whom I have had contact in connection with the matters at issue.
- 3. I also desire to call to the attention of this Court the fact that the defendants' Motion for Summary Judgment has been upon the eve of trial, and after two and one-half years since the the action was instituted, so that its appropriatness at this stage in the proceedings is open to question, considering the fact that

this is a non-jury trial and about to be tried before this Court.

- 4. I personally have been engaged in the business of preparing and publishing horoscopes, zodiac tables and similar material for more than forty years. During that period of time, I have written many articles and books on the subject of astrology, including the signs of the zodiac and the varying relationships between the various planets and other celestial bodies and their particular location on any given day or date of a particular day, month or year. The whole field of astrology is one in which literally millions of people are interested, based on a theory and belief that an individual's actions at a given time may be influenced and affected by their particular personal characteristics which are defined by the date on which the individual was born, represented by a particular sign of the zodiac. These characteristics are also taken into consideration with the affects upon such a person of the juxtaposition of certain planets at given times. In essence and in substance, there are no two days of the year that are identical with respect to any individual considering the location of the various astrological bodies. These theories and beliefs have existed practically since the beginning of time and the existence of man.
- 5. In the lunar and solar scheme of things, there are no duplications of these events from one year to the next, and sun, planet and other astrological charts, for example, for the year of 1964, would neither be suitable for nor appropriate, nor would they be accurate for any succeeding year. People interested in astrology would know this to be true and could easily determine the inaccuracy of, for example, a 1964 moon table or other astrological

chart presented to them in a later year.

6. With this background and dealing primarily with the first publication to be considered by this Court, Zolar's Family Horoscope, the following facts are pertinent.

In March, 1963, after several conversations that I had with various persons employed by Doubleday, and after discussing my proposal to bring out a pocket sized soft cover book under the name of Zolar's Family Horoscope, I received a latter from the defendants' Denise Rathbun, one of their editors, confirming prior negotiations with respect to producing this book for November, 1963 publication. A copy of her letter to me is annexed hereto as Exhibit A. Immediately upon receipt of that letter, I wrote to her at the Garden City Publishing Company by letter dated March 20, 1963, a copy of which is annexed hereto as Exhibit B. My letter was clear and unequivocal, and the first paragraph stated as follows:

"In answer to your letter of March 18th, I agree to accept the proposed terms, the only provision being that I want a contract for one year only."

I was preparing a 1964 edition, usable in 1964, and for no other year. My letter then went on to say:

"In the event that this publication proves successful, I shall expect a 10% royalty for any ensuing editions."

I had reference to, and this was known to the defendants, the fact that the 1964 edition was to be a test to see what the sales would be, and that I intended to bring out annual editions thereafter keyed and geared to a specific year. That letter of March 20, 1963, as illustrative of the timeliness of this proposed publication, closed saying: "I am herein enclosing the first three pages and the last two pages of the book and the sign of 'Aries' with the exception of the day-by-day guide. You can count approximately twelve pages for the day-by-day guide for each sign."

The defendants knew from this material that for each sign of the zodiac a day-by-day guide would be prepared for each day of 1964, based on the various astrological signs applicable thereto. Stated differently, we were negotiating for the publication of a soft cover book whose life and usefulness would expire on December 31, 1964 and not intended to be offered for sale again.

Rathbun dated March 26, 1963, a copy of which is annexed hereto as Exhibit C, enclosing a copy of the contract which has been annexed to plaintiff's moving papers as an exhibit annexed to the Doubleday answer referred to therein as Exhibit B. That same letter emphasizes the fact that Zolar's Family Horoscope would be geared to a daily as well as a month-by-month forecast under "...the sign, the month and the lucky numbers." "Then will follow the planetary aspects text..." "Finally, the day-by-day guide." On page two of that letter, there is further recognition of the fact that this publication deals with a specific year. It states:

"I have kept the annual forecast which looks fine for length. The only change in it I would suggest is at the end."

This was not a general book on horoscopes. It was a specific, dated book having reference only to the year of 1964. It was edited for use only during the calendar year 1964 and would be useless, misleading and inaccurate for any subsequent year. An inspection of the book, as it was published by the defendant Doubleday, as "A Dolphin Original - C433" on the cover clearly

states:

"Advice for each day of the year."

This is further reinforced by the back cover, again referring to the "whole year", "month-by-month forecasts", and "every day of each month." In the next to last paragraph on the back cover, this factor is clearly stated:

"If you would know in advance of the tendencies and dangers to guard against..."
(Emphasis added)

In the preliminary material within the book itself, the title page states:

"A complete astrological guide for everyone for each day of the year."

On the following page prepared by the defendant Doubleday appears:

> "The Dolphin Books Edition is the first publication of Zolar's Family Horoscope 1964 Edition" (Emphasis added)

Starting at page 5 appears the material for Aries, a sign of the zodiac, for the month of January and on succeeding pages goes on to the month of December, continuing on page 18 with Taurus, a sign of the zodiac, and going through the twelve months of the year, with the balance of the book devoted to the remainder of the twelve signs of the zodiac. As further evidence of the fact that the editorial contents are varied for each year, the statement at the top of page 209 appears:

"The time of the Moon's entry into a Sign will vary each year,..."

On page 205 and the key to this publication appears the heading:

"MOON TABLE 1964"

8. At this point, no one care riously question that the subject matter of plaintiff's contract with the defendant Doubleday relating to Zolar's Family Horoscope was solely and completely keyed to a single issue, the 1964 edition to be published for sale purposes during 1964. The name of Denise Rathbun, which has been and referred to above who is described by LeBaron Barker, an officer and of the defendant Doubleday, who, at page 4 of his deposition taken on March 9, 1973, testified that he was Executive Editor for the defendant Doubleday, and on page 8 of his deposition of that date, when asked about Denise Rathbun and her position with Doubleday, he answered as follows:

"She was an assistant editor in the Anchor Division which handled Anchor Books and Dolphin Books."

When asked who was responsible for the development and publication of <u>Zolar's Family Horoscope</u> at Doubleday, Barker testified, at page 7, as follows:

"A Yes, a girl named Denise Rathbun who printed with Praeger Publishing Company."

The correspondence quoted above with Denise Rathbun was had with her as an employee of the defendant Doubleday. The defendant, in preparing to offer Zolar's Family Horoscope for sale, prepared what is known as a newsstand display carton, a photocopy of which is annexed hereto as Exhibit D. I respectfully call the Court's attention to the fact that that carton boldly states:

"What does 1964 hold for you?"

That carton identified the publication to the purchaser as being a 1964 edition to be used during that year.

9. The 1964 edition of Zolar's Family Horoscope did not find a good sale as a result of the defendant Doubleday's efforts

in its behalf. As a matter of practicality, the 1964 edition would have been dead on the newsstands as far as purchasers' interests were concerned by April or May, 1964, although the defendant Doubleday permitted it to remain on sale for an extended period after. On April 27, 1966, I requested an accounting on that edition. In my letter, a copy of which is annexed hereto as Exhibit E, I stated as follows:

"I am enclosing herewith a copy of my 1966 edition...

"The thought occurred to me that Doubleday might be interested in publishing this yearly paperback which is developing into a very substantial seller.

"We are getting ready to make our allotment for our 1967 books..."

The defendant Doubleday's Denise Rathbun replied to me, by letter of May 9, 1966, a copy of which is annexed hereto as Exhibit F, in which she reported total sales of Zolar's Family Horoscope for 1964 as being Sixteen Thousand (16,000) copies, and then she went on to say:

"In view of this, it does seem even more logical for you to continue publishing the new editions yourself.

Sincerely,

Denise Rathbun"

I thereupon considered the publishing venture with defendant Doubleday as having been terminated, except for certain fringe items which had happened earlier relating to Spanish and English rights to a reprint edition of my 1964 Zolar — mily Horoscope. For example, on June 11, 1965, I received a letter from defendant Doubleday's Barker, a copy of which is annexed hereto as Exhibit G, having reference to the Spanish rights, and he stated:

"I think they were quite aware of the fact that it was a dated book. They are so slow in turning around on these things, I don't see how it is possible to get them to do a family horoscope in the current year. I admit it seems kind of silly, but there it is."

It was not only silly but completely impractical and a useless act, since the material in the 1964 edition of <u>Zolar's Family</u>

Horoscope was usable for that year, and that year alone, and anyone with any knowledge of astrology would have recognized that fact, as did Mr. Barker.

10. Based on the foregoing, I produced and published annual editions of Zolar's Family Horoscope for each of the following years:

The defendant Doubleday knew of the 1966 and 1967 editions.

My letter to them of April 27, 1966 made that clear. Denise Rathbun's letter to me of May 9, 1966, mentioned previously as annexed hereto as Exhibit F, was a clear go-shead on future editions.

Late in 1970, I prepared and delivered for sale upon the newsstands the 1971 edition of Zolar's Family Horoscope. I was then faced with the fact that another Zolar's Family Horoscope, in direct competition with mine, had been published by Coronet Communications Inc., under arrangement with Doubleday & Company, Inc., and distributed nationally by the Independent News Co., Inc.

At this point, there were two Zolar's Family Horoscope paperbacks on the newsstands, directly in competition with each other, the difference being that my edition had a yellow front page with a

blue outline, with the date 1971 displayed thereon, as against the defendants' publication with a yellow cover prominently featuring the name Zolar's Family Horoscope. Examining the defendants' edition indicated that it was a complete reprint of my 1964 edition and with every sign of the zodiac and astrological positions incorrect as far as the year 1971 was concerned. In view of the fact that my relationship with Doubleday had terminated in 1966 in connection with this title, and since it was a dated issue, namely, prepared for a specific period of time, the year 1964, it provided me with two major problems, the first being direct competition with the 1971 edition which I had just placed on sale, and the second, offering to the public under my name an edition intended for use during the year 1971 prepared by the defendants, which was completely inaccurate. After my forty years of carefully producing, editing and selling what I tried to develop as accurately as possible, namely, horoscopes that conformed to the positions of the moon and the planets, the defendants' edition could only create confusion upon the newsstands, take sales away from my edition, and in general create an inestimable amount of ill will against the name Zolar from anyone purchasing the defendants' edition offered for sale during the year 1971 only to find that they had bought material which was not keyed or geared to the year in which it was purchased. The defendants Doubleday and Coronet Communications certainly attempted to defraud the public and to misrepresent the product, in that they completely eliminated the major key to the book which appears at page 204 of the original 1964 Zolar's Family Horoscope entitled 'Moon Table 1964" This does not appear in the defendants' unauthorized edition.

The defendants were aware of this and the fact that the 1964 edition was intended for one period of time. Susan Jacobson, the Managing Editor of the defendant Coronet Communications, sent a letter to the defendant Doubleday under date of April 27, 1970, a copy of which is annexed hereto as Exhibit H, in which she reports to Mr. Macri, one of the defendant Doubleday's business managers, as follows:

"In checking through Zolar's Family Horoscope (Dolphin) I notice that the book contains a Moon Table for 1964. Naturally, this will have to be revised.

"If you can get Zolar to provide a new Moon Table, the book will be up-to-date and we can put a 1970 copyright in — and then the customers won't feel that they are buying an old book."

Nothing was said to me about the fact that they were intending to license anyone to produce the 1964 edition, for had I been so advised. I would have called their attention to the fact that the 1964 edition had been terminated in toto with the production of that issue by Doubleday, and Doubleday's employees both recognized and knew this to be the fact. Preparing a new Moon Table for 1971 was not the only change that had to be made. The editorial content had to be completely rewritten. This edition, reaching the newsstands before the plaintiff's 1971 edition was put on sale, had the advantage of being purchased by retail purchasers who were looking for the plaintiff's edition and thereby capitalizing on it. The defendants sold 39.775 copies of an outdated publication which obviously was purchased by the public on the basis of my continuous publication and production of this title from 1966 right up to the 1971 edition.

For the foregoing reasons, plaintiff's Motion for Summary Judgment dismissing the complaint as to the violation of plaintiff's copyright and for unfair competition should be denied in its entirety.

publication which the plaintiff had contracted for with the defendant Doubleday, namely, Zolar's Encyclopedia and Dictionary of Dreams." This was a hard cover book, and the contract between the parties is shown as part of the defendants' Verified Answer, Exhibit B, annexed to defendants' moving papers. That contract is dated January 21, 1963. Without going into the negotiating details with respect thereto, suffice it to say that the defendant Doubleday did publish the encyclopedia, and the remainder of this affidavit will be devoted to it alone.

Under date of January 13, 1965, I wrote to the defendant, attention of Mr. Barker, a copy of which is annexed hereto as Exhibit I. In that letter, I asked as follows:

> "I would also like to know whether or not you are going to discontinue publishing the Zolar's Encyclopedia and Dictionary of Dreams. If so, I would like to make arrangements to take whatever copies you have off your hands and have the title reverted back to me."

As a matter of custom in the trade, as between an author and a publisher, when the publisher has decided to terminate his business arrangement with the author, the author is given the right to purchase all unsold material from the publisher at a wholesale price or at a production cost, and upon the payment of such cost and the delivery of the material to the publisher, the contract is deemed terminated and all rights revert to the author. That was the substance and reason referred to above. I received a tele-

phone call from Mr. Barker stating that a member of the Doubleday firm would contact me for the purpose of closing out our relationship on the encyclopedia. Hearing nothing, I wrote to Mr. Barker, under date of February 24, 1965, a copy of which is annexed hereto as Exhibit J. I quote from my letter as follows:

'We have been awaiting your representative to contact me with reference to making arrangements for the closing out of my Encyclopedia and Dictionary of Dreams."
(Emphasis added)

I emphasize the use of the words "closing out". It was the same language that I used in discussing the matter with Mr. Barker who seemed agreeable.

With respect to the termination of the contract, the deposition taken of Mr. Barker on March 9, 1973 having to do with the subject of cancelling the agreement of January 21, 1963 states as follows:

"BY MR. ESTROW

Q Did there come a time when there were discussions between you and Mr. King with respect to cancelling the agreement between the parties dated January 21, 1963, and I have reference, of course, to the Dream Dictionary?

MR. CALLAGY: You are referring to Defendants -

MR. ESTROW: Defendants' B, Plaintiff's 21.

A Yes.

Q Would you tell us what those discussions were?

A Well, the discussions were in the form of letters mostly.

Q Before we get to the letters, did you have any oral conversations?

A I think he talked to me on the telephone about it.

Q What did he say to you and what did you say to him?

A My memory is that he said that he'd like to get the rights back, and I probably said to him, we'll see what I can do.
I'll try to get them back.

Q All right. What, if anything, did you do about seeing that he got the rights back as you just testified?

A I asked to have a memo put through for a reversion, then it turned out the system — by the way, I should explain to you a reversion of rights memo goes to all the departments. If any department sees the possibility of using those rights, selling those rights to any company, individual or whatever he will hold up the reversion on rights.

I think I may have been hopeful at the beginning that those rights would clear through. My memory is that they were held up and not cleared through and there the rights were not reverted.

Q You talk of a memo of a 'reversion' is that what you call it?

A It is a form. It is a reversion form which has to be initialed by something like ten people representing ten different divisions of the sub-right departments and the company.

Q You prepared such a memo?

A I asked for such a memo to be prepared, and at that point two things popped up: One was an English sale and one was a Spanish sale. And I think that held up the actual preparation of such a memo because it would have automatically cancelled it out, automatically held it, I should say."

Subsequent to my telephone conversations, one of which was referred to by Mr. Barker in the aforementioned testimony, I received a letter from Mr. Barker, a copy of which is annexed

hereto as Exhibit K, under date of March 10, 1965. I quote from that letter:

"This letter can be considered a formal release of rights on the hard cover edition of Zolar's Encyclopedia and Dictionary of Dreams in the United States, Canada and open market."

This left open only the question of reprint rights which are actually authorizations to Doubleday to sell the rights to republish to third persons. Mr. Barker's letter continues:

"We are still hopeful of making a reprint sale on the book, but if nothing happens within the next six months, we will release the reprint rights to you as well."

I was satisfied with that arrangement and was agreeable to waiting the six months, and I so advised Mr. Barker. The letter continues as follows:

"As you know, we have sold the British rights to Frederick Muller and are negotiating a deal with a Spanish publisher.

We ought to hang on to British rights for at least another year. Frederick Muller published the book in April of 1964 when they imported 1,500 sheets from us, but they should have at least two years to sell the book and perhaps a bit more. We've sent out contracts to Editorial El Atlantico B.A. and we expect to have the signed contracts back any day now. Here again, we ought to hang on to the rights for two years to protect the Spanish publisher."

Again, this was satisfactory to me, since subsidiary rights in the United States and throughout the rest of the world, except British rights, and Spanish/would have reverted to me unless Doubleday was able, in the next six months, to arrange for a sale of such rights. I told Mr. Barker over the telephone that I had various opportunities for selling the encyclopedia through the remainder of the world and would want to be kept advised as to their progress on the British

and Spanish material, as well as any other sales that they could consummate in the six month period. Mr. Barker told me that I would receive a letter confirmation from Mr. Smith, Business Manager for Doubleday, with respect to the remainder copies. A copy of my letter to Mr. Barker is annexed hereto as Exhibit L. I received a reply from Mr. Lindquist, identified by Mr. Barker as an assistant to Mr. Smith, the Business Manager, setting forth the cost of 87 cents per copy for the remaining 2,664 copies, and the letter ended with this paragraph:

"All publishing and distribution rights for this title reverted to you with the relesse already received from Mr. Barker."

At that time, and based on that letter, I assumed that all rights had reverted to me since this was the clear import of that letter.

However, under date of April 9, 1965, I received another letter in duplicate from Doubleday which was at variance with my prior conversation with Mr. Barker and the correspondence between him, Mr. Smith, Mr. Lindquist and myself. The letter granted me the right to publish a hard cover book at not less than \$2.00 per copy in certain territories, which was not our agreement, with all other rights remaining in Doubleday, which was not our agreement, and fixing the price of 87 cents per copy for the remainder. Paragraph 4 of that letter states as follows:

"If, however, within six months from the date of this letter, we have made no sale of the reprint rights to the Work in the United States, Canada and the Philippine Islands; territories other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language, you may then request that such rights be reverted to you at which time we will consider your request."

When I received that letter, I contacted Mr. Barker who had signed it and asked him what the letter meant in plain language. He said to me that it meant exactly the same thing as his letter to me of March 10, 1965, but that it was still the intention of Doubleday to attempt to sell reprint rights during the next six months. Failing in that, all rights would revert to me. With that understanding, I signed the letter agreement and returned it to Doubleday. I was, however, curious about the existence of the Spanish rights and I talked to Mr. Barker on the telephone and asked what the status was. In reply thereto he sent me a letter dated June 3, 1965, a copy of which is annexed hereto as Exhibit Mr. His letter stated:

"Spanish rights were indeed sold on the Encyclopedia and Dictionary of Dreams for \$250 advance. The same firm bought the Spanish rights to Family Horoscope also for \$250. No reprint rights were sold on the Encyclopedia of Dreams, but as you know English rights were sold and this is the whole story."

The letter was contradictory because Spanish rights and reprint rights are one in the same. Upon receipt of that letter, I wrote to Mr. Barker on June 9, 1965, and a copy of that letter with writings thereon made by the defendants, since the exhibit annexed hereto came from Doubleday's files and was the original of my letter to them, bears strongly on the subject. In that letter, I saked:

"If possible, I would like to have a copy of the contract for the Spanish rights to my Encyclopedia and Dictionary of Dreams. With the exception of the Spanish and English rights to this book, I intend to promote this book vigorously."

In any event, six months from April 9, 1965 expired and under date of October 25, 1965 I wrote to Mr. Barker, after

several telephone conversations with him, and the substance of my letter, a copy of which is snnexed hereto as Exhibit N? is as follows:

"Based upon our agreement of April 9th, I have been informed that you have not been successful in selling the paperback rights to Zolar's Encyclopedia and Dictionary of Dreams.

"Therefore, according to our previous correspondence these rights and all other rights pertaining to this publication have of this date reverted to me."

This letter, of course, had reference to all other subsidiary rights other than the English reprint rights and Spanish rights which were referred to in the previous correspondence. However, I was still completely in the dark about the so-called Spanish rights and, while I wanted to produce a Spanish edition, I did not want a conflict with the rights supposedly sold according to Mr. Barker in his letter of June 3, 1965, Exhibit M hereto attached.

On numerous occasions, I had telephone conversations with Mr. Barker asking for copies of the contract, and I was still given to understand that such a contract had been signed with an Argentine publisher on April 13, 1964. Accordingly, I wrote again to Mr. Barker under date of April 25, 1966, a copy of which is annexed hereto as Exhibit O, as follows:

"On April 13, 1964 you signed a contract with a firm in Argentina for the publication in Spanish of Zolar's Encyclopedia and Dictionary of Dreams. I was wondering whether or not this firm has published these books. I note that the contract calls for six gratis copies to be mailed to you in New York. I would greatly appreciate receiving one or two of these Spanish copies if they are available."

Under date of May 9, 1966, I received a letter from Mr. Barker's secretary, a copy of which is annexed hereto as Ex-

hibit P, reading:

"You are quite right about the Spanish edition of Zolar's Encyclopedia and Dictionary of Dreams which the publishing company in Argentina was supposed to have published, according to contract, by April of 1965.

"I have asked our Foreign Rights Department to check into this and to get from them the six gratis copies promised in the contract.

"As soon as I receive word and copies of the book I will be in touch with you again."

I heard nothing further until October 4, 1966 although
I made numerous telephone calls to Mr. Barker's office in the
intervening period, and I wrote to him on that date, a copy of
which is annexed hereto as Exhibit Q, as follows:

"On May 9th, I received a letter from you stating that you were looking into the situation pertaining to the Spanish edition of Zolar's Encyclopedia and Dictionary of Greams which was to be published in a contract signed in April 1965.

"Up to the present time I have not heard from you or the foreign rights department nor have I received the free copy that the contract calls for.

"Kindly let me know whether or not this contract was consummated, as I have an opportunity to sell the Spanish rights to this book."

Under date of October 21, 1966, I received a letter from Mr. Barker's secretary stating that the Argentine publisher was out of business, a copy of which is annexed hereto as Exhibit R. In its pertinent part, it read:

"We were waiting for final word on the status of Editorial Del Atlantico (which we discovered went out of business) and, hence, the long delay."

Also submitted to me at that time was another letter agreement intended to revert to me the Spanish rights, but in my

interpretation of the correspondence and telephone calls that had occurred between us, and with the demise of the Argentine publisher, there was no need for any further documentation, and I refused to sign the letter agreement of October 11, 1966 which was submitted to me. At that point, with more than two years having expired since the rights to print in Britain having passed, and the Spanish publisher having gone out of business, and with my letter of October 25, 1965, the entire matter of Doubleday's interest in the Encyclopedia was finished.

I heard nothing about the Encyclopedia although I undertook to publish a soft cover edition later on and was faced with a competitive publication produced by the defendant Coronet Communications, which was completely unauthorized, without our consent or approval and in complete violation of plaintiff's copyright.

plaint and the defendants' counterclaim that bears reference.

The defendant Doubleday knew that I intended to publish a 1965 edition of Family Horoscope but could not do so because of their delay in determining whether or not they wanted to publish that year's edition. They could easily have determined that I had published subsequent editions right through and including the 1971 edition. I sent them a copy of my 1966 edition. However, to the extent that the defendant Doubleday claims that the plaintiff's 1971 edition violates any rights that they might have possessed, plaintiff's I respectfully call to the Court's attention that / 1971 edition in no way resembles the editorial content of the 1964 edition published by Doubleday. In addition, the defendant Doubleday's

aith enowledge, tamnot give them any right to complain about the plaintiff's 1971 edition. On the other hand, the failure of the defendant to identify the Coronet Communications' production as being a 1964 edition has obviously created confusion and damage to the plaintiff herein.

The Motion for Summary Judgment should be denied for the foregoing reasons.

BRUCE KING

Sworn to before me this

Natary Public

5th day of February, 1974

March 18, 1963

Mr. Bruce King
Zolar Publishing Co., Inc.
33 West 60th Street
New York, New York

Dear Mr. King:

I've now gotten authorization to make you a firm offer for "Zolar's Family Horoscope;" namely, an advance of \$1500, physble half on signing and half on delivery against a royalty of 6% of the retail price (which would probably be 95¢) on copies sold in the United States and h% on copies sold elsowhere. As in the contract you have with the hardcover department, we would have all rights throughout the world.

I've been thinking some more about what the book might centain and it seems to me we would be best off going to 240 pages. Our pages centain roughly 400 words each -- 39 lines of 57 characters each. This is a bit more than is on the pages of "It's All in the Stars," but only half the size of your pamphlets. The 240 pages could then be allocated: 8 pages for front matter; and 19 pages per sign, 7 for general characteristics and 12 for one page for each month; and four pages would remain using this breakdown, perhaps for a general introduction.

I hope the contract terms will seem satisfactory to you so that we can proceed with getting the book ready for November publication.

Sincerely,

Denise Rathbun

DR/kb

EXHIBIT A MI CINDANT

APR 25 1972

HENRY S. CREAMER, C.S.R.

Exhibit A"

ZOLAR PUBLISHING CO., Inc.

33 WEST 60th STREET

NEW YORK 23, N. Y.

COlumbus 5-1094

BRUCE KING President

March 20, 1963

Garden City Publishing Company 575 Madison Avenue New York 22, N.Y.

Att: Miss Denise Rathbun.

Dear Miss Rathbun:

In answer to your letter of March 18th, I agree to accept the proposed terms, the only provision being that I want a contract for one year only.

I am making a concession in accepting this contract. I have never accepted less than a 10% royalty for my paper back editions. In the event that this publication proves successful, I shall expect a 10% royalty for any ensuing editions.

I am herein enclosing the first three pages and the last two pages of the book and the sign of "Aries", with the exception of the Day by Day Guide. You can count approximately 12 pages for the Day by Day Guide for each sign.

Trusting that this copy is in line with your expectations, I am,

Sincerely,

ZOLAR PUBLISHING CO. INC.

Bruce King.

BK: cp

EXHIBIT DEFENDANT

APR 25 1972

A-107

HENRY S. CREAMER, C.S.R. Exhibit B

March 26, 1963

Mr. Bruce King Zolar Publishing Co., Inc. 33 West 60th Street New York, New York

Dear Mr. King:

Two copies of your contract for "Zolar's Family Horoscope" are enclosed As before, please sign and return both copies for signing by Doubleday. We'll then send you a file copy.

I've now had an opportunity to have a full discussion with our designer of the plans for the page layout for the month-by-month forecasts.

The running head will give the sign, the month and the lucky numbers. (By moving the numbers up a lot of space is saved for text, as they can be explained once at the beginning of these sections rather than included in a sentence on every page.)

Then will follow the planetary aspects text. There will be 15 lines of 57 characters each available for this text which must not run over 850 characters. A character is counted for every letter, space and punctuation mark.

Finally, the day-by-day guide. This will be in somewhat smaller type than the text, but I think it will be interesting looking for, again to avoid repetition, we've thought of putting the "favorable" days' entries in bold face and the "unfavorable" ones in regular type. This could be explained in a note at the beginning along with the lucky numbers. Each of these, including the date, can run one line, or a total of 57 characters.

As you will see I have indicated on the Aries monthly planetary aspects the approximate number of characters each now contains. Most are about 300 characters over the top, which isn't too bad when one divides by 5.5 and sees it's only roughly 60 words.

EXHIBIT O DEFENDANT

Ar R 2 5 1972

A-108

Exhibit C"

HENRY S. CREAMER, C.S.R.

I've gone over the introductory section rather carefully to be sure it read smoothly, since it is the very first section of the book and the one the casual browser is going to turn to right after he's looked at his own sign. Of course, my suggestions are precisely that — suggestions that you may take or not. I did find some difficulties in the organization of these pages and instead of drawing arrows all over to indicate possible rearrangement, I've just retyped them, incorporating the moves I'd suggest.

I've kept the Annual Forecast which looks fine for length. The only change in it I'd suggest is at the end. For this book, it isn't necessary to identify the celebrities' occupations — thoughtfor someone like Henry Clay it can be helpful!

In the compatible and incompatible signs chart, is it necessary to head the lefthand column "Male with the Sun in" and include "women" after the signs listed? That is, does the chart work the other way around? I'd presume it does.

If you have any questions, complaints or comments, please call. I'll be looking forward to getting more material.

Sincerely,

Denise Rathbun

P.S. I've made up April 15 for the contract as a manuscript due date since thehave to fill in some date. Actually it would be ideal to have everything by then if it's physically possible for you to have all the material prepared by then.

DR/kb



CABLE ADDRESS: ZOLARKING

ZOLAR PUBLISHING CO., Inc.

33 WEST 60th STREET

NEW YORK 23, N. Y.

COlumbus 5-1094

BRUCE KING President

April 27, 1966

Doubleday & Co.Inc. 277 Park Avenue New York, N.Y. Attentio: Miss Denise Rathbun.

a AD

Dear Miss Rathbun:

I would greatly appreciate if you would let me know what thefinal net sales were for the 1964 Family Horoscope that DoubleDay published.

I am herewith enclosing a copy of my 1966 edition. You will note that the paper is far inferior to the Doubleday edition and that we also put a 75¢ price instead of a 95¢ price on the cover.

This book was sold through wholesale news dealers, paper back book stores, jobbers and chain stores. Of the book stores there were several hundred of these stores who purchased these books direct from us.

Our sales as of April 15 was 45,000 copies.

The thought occurred to me that Doubleday might be interested in publishing this yearly paperback which is developing into a very substantial seller. Perhaps some arrangement can be made whereby I would be able to purchase a quartity of these books for my outlets at 15% above your cost so that I could resell it and thereby insuring Doubleday a substantial sale each year. Of course we would not sell Doubleday accounts which I understand are mostly hard cover book stores.

We are getting ready to make our allotment for our 1967 books and I would appreciate hearing from you at your earliest convenience.

Sincerely,

Bruce King.

P 8 for Col 1/10/2 RB flay 2, 1966 Mr. Bruce King Zolar Publishing Company, Inc. 33 West 60th Street New York, New York 10023 Dear Mr. King: I've found my note on the total sales of the Dolphin edition of ZOLAR'S FAMILY HOROSCOPE for 196h; they are 16,000 through March '66. In view of this, it does seem even more logical for you to continue publishing the new editions yourself. Sincerely, Denise Rathbun DR:cm A-112

P-5- FO Rd 1/10/21 DOUBLEDAY & COMPANY, INC. Publishers 277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000 BET. EX. Z (id) 4-21-72 Mbs June 11, 1965 Mr. Bruce King Zolar Publishing Co., Inc. 33 West 60th Street New York 23, New York Dear Bruce: The Contract with the Spanish publisher for the FAMILY HOROSCOPE was actually signed in 1964, and I think those were quite aware of the fact that it was a dated book. They are so slow in turning around, these things, I don't see how it is possible oround, these things, I don't see how it is possible to get them to do a FANTLY HOROSCOPE in the current year. I admit it seems kind of silly, but there it is. I am sending copies of the Spanish publishers' contracts on both of your books. I don't think there is much point in our trying to handle THIRTY YEARS IN ASTROLOGY, because I don't think we would sell enough copies to make much money for you or for ourselves. We just don't seem to know how to sell these books. Cordially yours, Lee Barker I.R, hc Unc . ONLY COPY AVAILABLE A-113 Exh.bit 6

P. 12 kn :60 April 27, 1970 Mr. Ted Macri Doubleday & Co., Inc. 277 Park Avenue New York, New York 10017 Dear Ted: In checking through ZOLAR'S FAMILY HOROSCOPE, I notice that the book contains a MODN TABLE for 1964. Naturally, this will have to be revised. If you can get Zolar to provide a new boon table, the book will be up-to-date and we can put a 1970 copyright in -- and then the customers won't feel that they are buying an old book. I'd like to know if we can have this before I send the contracts out to you. Also, are the plates or molds from your edition available? If so, we might like to buy them. Who is the person to talk to--or can we arrange them through Take care. Best regards, Susan Jacobson Managing Editor SJ/11 ONLY COPY AVAILABLE A-114 Exhibit H'

ZOLAR PUBLISHING CO., Inc.

33 WEST 60th STREET

NEW YORK 23, N. Y.

COlumbus 5-1094

BRUCE KING

January 13,1965

Seat 1.19

Doubleday & Co. Inc. 277 Park Avenue New York, N.Y.

Attention: Mr. Lee Barker

Dear Mr. Barker:

I have not as yet received my October statement,

I would also like to know whether or not you are going to discontinue publishing the Zolar's Encyclopedia and Dictionary of Dreams. If so, I would like to make arrangements to take whatever copies you have, off your hands and have the tile reverted back to me.

Thanking you for your cooperation in this matter, I am,

Sincerely,

ZOLAR PUBLISHING CO. INC. To Pruce la

Bruce King, President

BK: cp

ONLY COPY AVAILABLE

EXhibix I

ZOLAR PUBLISHING CO., Inc. 33 WEST 60th STREET NEW YORK 23, N. Y. BRUCE KING 0FT. EX. N (il)
4-21-72 mhs COlumbus 5-1094 February 24,1965 Doubleday and Co.Inc.

277 Park Avenue Bow York, how York.

Attention: "r. Lee Barker Editor.

Dear Mr. Barker:

order to began min 2/25/65

We have been awaiting your representative to contact me with reference to making arrangements for the closing out of my "Encyclopedia and Dictionary of Dreams".

Will you kindly see to this matter for me.

Thanking you, I remain,

Sinceroly,

ZOLAR PUBLISHING CO. INC.

Bruce King, President

A-116

ONLY COPY AVAILABLE

Exhibit J"

P. 22 for 2d 11/10/71 DOUBLEDAY & COMPANY, INC. Publishers 277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000 BFT. EX. March 10, 1965 Mr. Bruce King Zolar Publishing Company 33 West 60th Street New York 23, New York Dear Bruce: This letter can be considered a formal release of rights on the hardcover edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS in the United States, Canada and open market. We are still hopeful of making a reprint sale on the book, but if nothing happens within the next six months we will release the reprint rights to you as well. As you know, we have sold the British rights to Frederick Muller and are negotiating a deal with a Spanish publisher. We ought to hang on to British rights for at least another year. Frederick Muller published the book in April of 1964 when they imported 1,500 sheets from us, but they should have at least two years to sell the book and perhaps a bit more. We've sent out contracts to Editorial El Atlantico B.A. and we expect to have the signed contracts back any day now. Here again, we ought to hang on to the rights for two years to protect the Spanish publisher. LB: jy A-117 Fxh. b. + K

P >3 to 2d, 1/10/71 DOUBLEDAY & COMPANY, INC., Publishers 501 FRANKLIN AVE., GARDEN CITY, L. I., N. Y. ~ PI 7-1700 March 25, 1965 re: ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS Mr. Bruce King, President ZOLAR PUBLISHING COMPANY, INC. 33 West 60th Street, New York 23, N.Y. Dear Mr. King: Mr. Smith has asked me to confirm for you that all of our inventory (approx. 2,664 copies) of the above title has been remaindered to you at a cost of \$0.87 per copy. All publishing and distribution rights for this title reverted to you with the release already received from Mr. Barker. Sincerely yours, R.J. Lindquist. rjl/amk A-118

Exlibit L

8-25 pr 4x 1/10/7, DOUBLEDAY & COMPANY, INC. Publishers 277 PARK AVENUE, NEW YORK, N. Y. 10017 TEL: 212 TA 6-2000 April 9, 1965 Re: ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, by Zolar. This letter, when signed by Zolar Publishing Company and countersigned by Doubleday & Company, Inc., will serve as an agreement concerning publication rights in ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS, by Zolar, which was the subject of an agreement between us dated January 21, 1963. 1. We grant to you the right to publish a hardcover edition of the Work in th English language, at a price not less than \$2.00 per copy, in the United States, Canada and the Philippine Islands; territory other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language.

2. All other rights granted to us under the agreement of January 21, 1963 for the publication of the above Work, remain in our sole and exclusive possession.

3. It is understood and agreed that you have purchased the remaining copies of the regular trade edition of the Work at 87¢ per copy and that no royalties are to be paid to you on the copies thus purchased.

4. If, however, within six (6) months from date of this letter, we have made no sale of the reprint rights to the work in the United States, Canada and the Philippine Islands; territory other than the U.S.A., the Philippine Islands and the British Commonwealth (exclusive of Canada) being an open market for copies produced in the English language, you may then request that such rights be reverted to you, at which time we will consider your request.

If the above is to your understanding and agreement, please sign this letter and return both copies to us for our countersignature. One copy will then be sent to you for your records.

AGREED:

Mr. Bruce King

Dear Mr. King:

Zolar Publishing Company 33 West 60th Street New York, New York 10023

ZOLAR PUBLISHING COMPANY

DOUBLEDAY & COMPANY, INC.

bulm Koubliday

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Exhibir M

P-3 por to 1/10/71 DOUBLEDAY & COMPANY, INC. Publishers RB 277 PARK AVENUE, NEW YORK, N.Y. 10017 TEL: 212 TA 6-2000 June 3, 1965

Mr. Bruce King Zolar Publishing Company 33 West 60% Street New York 23, New York

Dear Bruce:

Spanish rights were indeed sold on the ENCYCLOPEDIA AND DICTIONARY OF DREAMS for \$250 advance. The same firm bought the Spanish rights to FAMILY HOROSCOPE also for \$250. No reprint rights were sold on the ENCYCLOPEDIA OF DREAMS, but as you know English rights were sold and this is the whole story.

Lee Barker

LB/bc

Exh. b. + A-120

P- 4A Po 21/10/7/

ZOLAR PUBLISHING CO., Inc.

33 WEST 60th STREET

NEW YORK 23, N. Y.

COlumbus 5-1094

BRUCE KING
President

June 9, 1965

Doubleday & Company Inc. 277 Park Avenue
New York, N.Y. 10017

Attention: Mr. Lee Barker:

Dear Mr. Barker:

Thank you for your letter of June 3rd.

I note you state that you sold the rights to the Family Horoscope. There is evidently some mistake here since the contract for the Family Horoscope was only actually for one year as this is a dated book.

Sometime last year, I wrote to your editor and asked whether they would be interested in future editions of the Family Horoscope and I received a negative reply. If this firm reprints the Family Horoscope which is a 1964 horoscope, it will be useless for 1966.

If possible, I would like to have a copy of the contract for the Spanish rights to my Encyclopedia and Dictionary of Dreams.

With the exception of the Spanish and English rights to this book, I intend to promote this book vigorously.

I have rewritten my "Thirty Years in Astrology" and also two othe Occult Publications. While I have not as yet decided when to publish these books, I was wondering whether or not Doubleday would be interested in selling my titles. I would be willing to make an arrangement to repurchase all unsold books on the same basis as I did with the "Encyclopedia and Dictionary of Dreams".

Sincerely, Bruce King.

Wes

Doubleday & Company 277 Park Avenue New York, N.Y.

Attention: Mr. Lee Barker

Dear Mr. Barker:

Based upon our agreement of April 9th, I have been informed that you have not been successful in selling the paperback rights to Zolar's Encyclopedia and Dictionary of Dreums.

Therefore, according to our previous correspondence these rights and all other rights pertaining to this publication have of this date reverted to me.

Sincerely,

Bruce King.

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N-3

ZOLAR PUBLISHING CO., Inc.

33 WEST 60th STREET

NEW YORK 23, N. Y.

BFT. EX. CC 4-21-72

COlumbus 5-1094

BRUCE KING President

April 25,1966

Doubleday & Co. Inc. 277 Park Ave. New York, N.Y.

Attention: Mr. Lee Barker;

Dear Mr. Barker:

in Argentina for the publication in Spanish of Zolar's Oct 5,1965 On April 13, 1964, you signed a contract with a firm

I was wondering whether or not this firm has published these books.

I note that the contract calls for six gratis copies to be mailed to you in New York.

I would greatly appreciate receiving one or two of these Spanish copies if they are available.

Sincerely,

Bruce King.

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Exhibit "O"

DOUBLEDAY & COMPANY, INC. Publishers



277 PARK AVENUE, NEW YORK , N. Y. 10017 TEL: 212 TA 6-2000

DFT. EX. DD (ul) 4-21-72 mls

May 9, 1966

Mr. Bruce King
Zolar Publishing Company, Inc.
33 West 60th Street
New York 23, New York

Dear Mr. King:

You are quite right about the Spanish edition of ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS which the publishing company in Argentina was supposed to have published, according to contract, by April of 1965.

I have asked our Foreign Rights Department to check into this and to get from them the six gratis copies promised in the contract.

As soon as I receive word and copies of the book I will be in touch with you again.

Cordially yours,

Janet Yeaton

Secretary to Lee Barker

net Youth

King

OFT. EX. FF (1d)
4-21-72 mg October 21, 1966

Mr. Bruce King Zolar Publishing Co., Inc. 33 West 60th Street New York, New York

Dear Mr. King:

Herewith finally is the amendment letter reverting the Spanish rights only on ZOLAR'S OFFICIAL DREAM DICTIONARY AND ENCYCLOPEDIA to you.

We were waiting for final word on the status of Editorial Del Atlantico (which we discovered went out of business) and, hence, the long delay.

I am sorry about this.

Sincerely,

Janet Yeaton Sec'y to Lee Parker

encl.

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Exhibit R'

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.,

Plaintiff,

:

71 Civ. 2061

-against-

DOUBLEDAY & COMPANY, INC. and CORONET COMMUNICATIONS, INC. and INDEPENDENT NEWS CO., INC.,

AFFIDAVIT

Defendants.

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

ROBERT M. CALLAGY, being duly sworn, deposes and says:

- 1. Defendants' motion for summary judgment is based entirely upon the pleadings in the case, the publishing agreements which plaintiff entered into with defendant Doubleday and the testimony given by plaintiff at the various examinations before trial in this case. In spite of the statement by plaintiff's President to the contrary (King aff'd, para. 2), my moving affidavit presents no facts which are outside my own personal knowledge. My affidavit was submitted principally to organize the proof available to the defendants from the pleadings, publishing agreements and testimony and to present it clearly to the Court.
- 2. This motion for summary judgment, which was made with the prior knowledge of the Court and also plaintiff's attorney, was made on December 12, 1973 and noticed for return

on December 27, 1973. It was not until February 5, 1974 that plaintiff's attorney served an answering affidavit, after he had, on two separate occasions, sought and obtained extensions of time to answer. Plaintiff's question about the timeliness of this motion (King aff'd, para. 3), ignores the basis on which this motion is made. Inasmuch as defendants rely upon the testimony of the plaintiff, the motion could not have been made until discovery was complete and plaintiff had submitted transcripts containing sworn testimony. In this regard, in spite of the repeated requests that the transcripts containing plaintiff's testimony be executed and returned to me, it was not until February 5, 1974, simultaneous with the service of the answering papers, that plaintiff's attorney delivered the transcripts containing the sworn testimony of his client.

ZOLAR'S FAMILY HOROSCOPE

3. In opposition to this thrust of defendants' motion, plaintiff argues that prior to signing the publishing agreement its President indicated to Doubleday that he wanted an agreement for one year only (King aff'd, para. 6). This contention, however, completely belies the publishing agreement (Ex. E) wherein plaintiff granted full and exclusive rights to Doubleday for the term of the copyright and any renewal period. This language is clear and unequivocal. Doubleday's rights to publish in no way were limited to the year 1964 or any other year, and plaintiff admitted this in its examination before trial. (King tr., pp. 126, 127).

4. As developed in the accompanying memorandum of law, the sole issue with respect to this aspect of the motion relates to a determination of the rights which plaintiff granted Doubleday under the publishing agreement. To determine these rights, one looks only to the publishing agreement itself. Claims and speculation by the plaintiff as to what may have transpired prior to or subsequent to the execution of the agreement and attempts by plaintiff's President to introduce parole evidence to vary the terms of the written agreement c an have no bearing on the case, particularly because the publishing agreement (Ex. E.) provides:

"This Agreement contains the whole understanding of the parties, supersedes all previous oral or written representations or agreements and may not be changed, modified or discharged orally. Any modification, change or discharge of this Agreement must be made in writing and signed by the Publisher." (par. 29)

which transmitted the contract (Ex. C to King aff'd) specified that ZOLAR'S FAMILY HOROSCOPE was to deal with a specific year (King aff'd, para. 7). That letter says nothing of the sort. Moreover, plaintiff's affidavit contains no facts whatsoever to support the conclusion that the book published by Doubleday could be used only during the calendar year 1964. For example, the language on the cover of the book "Advice for Each Day of the Year", which is referred to by plaintiff (King aff'd, para. 7) and the other language on the back cover and in the preliminary material which plaintiff refers to in no way limits the book to 1964. The statement "The time of the moon's entry into a sign will vary each year, * * * " does not, as plaintiff asserts, re-

quire the conclusion that this book was limited to a specific year. If the book had been limited to a specific year, it would have been appropriate to state with respect to each day "Monday, January 1st" instead of the way in which each day was referred to in the book, i.e., "January 1st". My moving affidavit (para. 8) explains why no significance attaches to the imprint "1964 Edition".

- 6. The advertising carton to which plaintiff also refers (King aff'd, para. 8), while it may have been used to promote sales in 1964, in no way limited the book to 1964. Similar advertising material asking "What does 1965 of 1966 hold for you" could have been used in subsequent years.
- 7. Plaintiff's statement that its relationship with Doubleday terminated in 1966 (King aff'd, para. 10) is completely contradicted by the very terms of the publishing agreement, the validity of which plaintiff acknowledged during the examinations before trial. Furthermore, plaintiff's contention that the predictions contained in ZOLAR'S FAMILY HOROSECOPE would be invalid for any years subsequent to 1964 because of the change in zodiac and astrological positions is contradicted by the testimony of plaintiff's own President:
 - Q. [MR. CALLAGY] Could you tell me whether or not all horoscope books for 1965 would have the same predictions for the same day?
 - A. [MR. KING] It all depends on who's writing them. You may not come to the same decision as he does in a law case better than -- that's all, that's my interpretation. (King tr. p. 142)

ZOLAR'S ENCYCLOPEDIA AND DICTIONARY OF DREAMS

- 8. Plaintiff's unsupported conclusion about the custom in the trade (King aff'd, para. 11) has no bearing on this case because the only operative document is the modification agreement (Ex. H. to moving affidavit) under which paperback rights specifically were retained by the publisher. In opposition to this motion, plaintiff attempts to confuse the Court by infering that remaindering of unsold book copies and reversion of rights are one and the same. In spite of plaintiff's reliance upon selfserving statements and interpretation of correspondence transmitted by plaintiff prior to plaintiff's execution of the modification agreement (Ex. H), only this latter agreement has any bearing on the question of reversion. That agreement specifically states that all paperback rights are retained by Doubleday and, while plaintiff may request that such rights be reverted, Doubleday was only under an obligation to consider a request, not to grant it.
- 9. Plaintiff's answering affidavit has raised no issue of fact and therefore it would appropriate for this Court to grant summary judgment as requested.

Robert M. Callagy

Sworn to before me this

8th day of February, 1974.

Notary Public

MARY A. TADANTING Notes Public 1 Ct 52 10-8 No. 30-39 2 - L

Qualified to acree on by Certificate Face of the case of the Commission expires mater 30, 1979

A-130

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ZOLAR PUBLISHING CO., INC.

Plaintiff, :

71 Civ. 2061

-against-

NOTICE OF APPEAL

DOUBLEDAY & COMPANY, INC., and : CORONET COMM. INC., etc.

Defendants.

Notice is hereby given that ZOLAR PUBLISHING CO., INC., the plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of Judge John M. Cannella, dated October 29, 1974, granting defendants' DOUBLEDAY & COMPANY, INC., and CORONET COMM. INC., etc., motion for summary judgment, which judgment was entered in the Office of the Clerk of this Court on October 31, 1974.

Dated: November 15, 1974

Stanley M. Estrow

Attorney for Plaintiff Zolar Publishing Co., Inc.

529 Fifth Avenue

New York, New York 10017

TO: Clerk of the United States
District Court for the
Southern District of New York

Satterlee & Stephens, Esq. Attorneys for Defendants 277 Fark Avenue New York, New York 10017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK a. S. Dest Court NOV. 29-10.59 Am - 74 S.D OF NY

ZOLAR PUBLISHING CO., INC.,

CROSS NOTICE OF

Plaintiff, : APPEAL

- against -

71 Civ. 2061 (JMC)

DOUBLEDAY & COMPANY, INC., CORONET COMM. INC., and INDEPENDENT NEWS CO., INC.,

Defendants.

Notice is hereby given that the above-named defendants Doubleday & Company, Inc., Coronet Communications, Inc. and Independent News Co., Inc., hereby appeal to the United States Court of Appeals from so much of the Order of Judge John M. Cannella, dated October 29, 1974, with judgment entered thereon in the Office of this Court on October 31, 1974, as denied defendants' motion for summary judgment on its counterclaims.

Dated: New York, New York November 27, 1974

SATTERLEE & STEPHENS

Attorneys for Defendants

Office & P. O. Address

277 Park Avenue

New York, New York 10017

TO: Clerk of the United States
District Court for the
Southern District of New York

Stanley M. Estrow, Esq. Attorney for Plaintiff 529 Fifth Avenue New York, New York 10017

| 1 | els |
|----------|--|
| 2 | UNITED STATES DISTRICT COURT |
| 3 | SOUTHERN DISTRICT OF NEW YORK |
| 4 | x |
| 5 | ZOLAR PUBLISHING CO., INC., |
| 6 | Plaintiff, : |
| 7 | vs. : 71 Civ. 2061 |
| 8 | DOUBLEDAY & COMPANY, INC., and : CORONET COMM. INC., etc., : |
| 10 | Defendants. : : : : : : : : : : : : : : : : : : : |
| 11 12 | Before; |
| 13 | HONL JOHN M. CANNELLA, District Judge. |
| 14 15 | New York, September 16, 1974; 10.14 o'clock a.m. (Room 1506) |
| 16 | |
| 17 | APPEARANCES: |
| 18 | STANLEY M. ESTROW, Esq., Attorney for Plaintiff. |
| 19 | |
| 20 | SATTERLEE & STEPHENS, Esqs., Attorneys for Defendant |
| 21 | Doubleday & Co., Inc.; BY: ROBERT M. CALLAGY, Esq., Of Counsel. |
| 22 23 | or counser. |
| 24 | . 124 |
| 25 | A-134 |

(Case ready.)

THE COURT: I have had an opportunity since we last met to more carefully consider this matter, and I have come to the following conclusion.

The parol evidence rule may be stated in the following terms:

Oral or written evidenceof prior or contemporaneous negotiations which is sought to be offered for the purpose of adding to or varying the terms of a written contract which on its face appears to be integrated, is not admissible and may not be received.

In this regard, an integrated contract is a writing or set of writings adopted by the contracting parties as the complete and final expression of their agreement. Unless and until an agreement is, or appears to be, fully integrated, it may be varied by parol evidence.

(1) With regard to plaintiff's claim for damages and injunctive relief arising from defendants' alleged infringement of its rights to the "Horoscope Book" the Court finds, as a matter of law, that the contract entered into between the parties of March 22, 1963 is complete

A-135

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and fully integrated as to its term.

The Court further finds that the term of this contract is a copyrogjt Aeropd pf 29 uears plus any renewal period.

This conclusion is especially clear because of the integration clause which is contained in Paragraph 29 of the agreement, which as a matter of settled law is entitled to great weight upon questions such as that at "issue in this particular case. Thus, the Court finds the parol evidence rule to be both operative and preclusive of any prior inconsistent terms related to the duration of the "Moroscope Book" contract, such as the antecedent negotiations between plaintiff and defendant Doubleday.

The Court further finds that the plaintiff's claim for damages and injunctive relief with regard to the "Horoscope Book" is according barred as a matter of law.

(2) The Court further finds that the plaintiff's claim for infringement damages and injunctive relief with respect to the "Dream Book" is controlled by New York General Obligations Law, found in McKinney's, Section 15-301.

The modification agreement entered into between the parties on April 9, 1965 allowed plaintiff to request that defendant Doubleday revert back to the plaintiff the rights to publish paperback editions of the "Dream Book" and

permitted that defendant to determine whether or not to allow such reversion to occur.

As to this, the Court finds that despite plaintiff's request or assertion pursuant to the modification agreement, that such reversion be effected, the Doubleday Company did not consent thereto in a signed written agreement and therefore, as a matter of law, no reversion could occur as the requirements of General Obligations Law, Section 15-301 were not met.

It therefore follows that the plaintiff is barred, as a matter of law, from asserting any claim for infringement as to the paperback publications of the "Dream Book" owing to the valid contractual right of defendants' to publish that work.

Now the question arises in my mind whether the defendant Doubleday as to the counterclaims, whether these counterclaims are made under Federal law. I don't believe that it is. I think that the counterclaims are based on contract rather than copyright law.

Do you take a different position?

MR. ESTROW: No, I don't, your Honor. I was going to address myself to some other things.

THE COURT:: The counterclaim, it seems to me, is not based on any copyright law but is based on an agreement

CIS

between the parties.

MR. CALLAGY: Except, your Honor, I feel in this case since the plaintiff didn't have the right to bring out its own editions of the books, and did so, he infringed the copyright he granted to Doubleday.

THE COURT: But he did that by contract, not according to copyright law. I think this should go back to the State Court. So we come then to the last portion of my remarks in this regard. With regard to the claims of all parties sounding in unfair competition and unfair trade practices as well as Doubleday's counterclaim, the Court find that such claims should now be dismissed. Dismissal of all of the claims asserted by the plaintiff under the Federal law places the claims now under discussion within the Court's pendent jurisdiction.

The Supreme Court has made it clear in United Mine Workers v. Gibbs, 383 U. S. 715, 726(1966):

"If the Federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the State claims should be dismissed as well."

Therefore, the Court now dismisses the pendent claims for unfair competition and unfair trade practices without prejudice, as well as Doubleday's counterclaims.

In so doing, the Court notes that these claims may now be

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asserted in a new action in the State Court. Such action is not barred because of the fact that there is a province in the New York CPLR, Section 205, Subdivision

A thereof, which so holds, and therefore you still have a right to bring your action in the State Court.

This being the case, there is no need for any further proceeding in this court. Submit an order to this effect.

MR. CALLAGHY: Thank you, your Honor.

I'm not quite certain whether your Honor is familiar with the fact that the 1971 edition of Zolar Family Horoscope produced by the defendant, it's an undated edition, is the same as our copyrighted edition of 1964. Our 1971 edition and every other edition we published is completely different in editorial content, and for that reason, your Honor, I think that --

THE COURT: I did take that into consideration,
but I didn't come to the conclusion you do. I still abide
by this decision. I was aware of that.

MR. ESTROW: And, your Honor, the second point that I wanted to call to your attention was the fact that subsequent to the entry I the contract, and assuming your Honor says it's an integrated contract and no prior

7 8

and writing by responsible members of defendant Doubleday in which they rejected the 1965 edition; they recjected the 1966 edition, and they said you were better off publishing on your own. And I think, your Honor, that to that extent it's an indication --

THE COURT: I know that you claim that that modifies the contract. I don't find it so.

MR. ESTROW: May I say this, your Honor, it's in writing. Under the General Obligations Law it is signed by the same party who submitted the material to us in the first instance, with whom we negotiated --

THE COURT: I think these arguments could be more properly made to an Appellate Court, rather than me.

I have given it serious consideration and I don't intend to change it at this time. So you have your rights of appeal, and you may be perfectly right and I may be perfectly wrong.

I just read a decision where one of my fellow judges was declared to be entirely wrong, and this happens to us once in a while.

I can only say to you this, that I considered this very serio-aly. I was prepared to try it. As a matter of fact, set some days aside to try it, and now

I find myself free until Thursday, when I try a criminal case. I would just as well have tried it. But after serious consideration, and over the weekend considering it as much as I could under the cases, I have come to this conclusion and therefore you know, all sides can't win, unfortunately. But I think you have your right to appeal; I know you have your right of appeal, and you can take whatever remedies you desire.

MR. ESTROW: I was under the opinion at the very least that there were issues to be tried here, and for that reason I didn't anticipate this result.

THE COURT: No, I think the only issue that could have arisen would have been if the parol evidence rule came into play, and since I find that it doesn't, I don't find any issues of fact.

MR. ESTROW: I wasn't speaking of the prior negotiations, your Honor, I was speaking of the transactions obviously evidenced in writing, clear as crystal, that they wanted no part of the Zolar's Family Horoscope. There may be a question as far as the dictionary, the encyclopedia dictionary of dreams as to whether or not there was a termination of that, and I think that was an issue that had to be tried.

THE COURT: As I say, I haven't deprived you of

any rights; I have simply held against you. I know the results are not pleasant, but nevertheless, it can't be pleasant for both of you, can it. He would have felt as bad as you do if I held against him.

MR. ESTROW: The only thing, he would have had his rights of defense and I would have had my right to try it. The motion for summary judgment, and I am speaking not about this case, in the last three years -- and I have been practicing for 40 years -- I have come to the conclusion that summary judgments are being granted perhaps 15 or 20 times more frequently than when I started practicing.

THE COURT: Not in this court. Not in the Federal jurisdiction. As a matter of fact, they are very rarely granted in the Federal jurisdiction. We always start with the theory that there must be some question of fact and that therefore we deny it out of hand. But there come a time when you must have the courage of your convictions, and it must be tested. Otherwise there would be no need for this remedy at all. The judges would simply say, oh, we throw up our hands, the fellow says there's a question of fact, and that's it.

MR. ESTROW: You know, your Honor, and I can't argue with that. But when you take a contract that says

Zolar's Family Horoscope, period, and as I had tried to indicate to you, if we had delivered a 30-page manuscript or if they had put out a publication at 15 cents retail, you know, somewhere down the line there had to be some, and I will adopt the term from Watergate, specificity -- I don't know what it means, but it sounds good -- but there has to be somewhere that you look at to find out what's involved here.

arguments are persuasive, but they are made to the wrong party. They should be made to the Appellate Court, who may agree entirely with you. That is done with an exception.

MR. ESTROW: There is nothing else I can say, your Honor.

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STATE OF NEW YORK COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the Zt day of APAIL served the within APPENDIX upon SATTERLEE ASTERHERS

attonrye(s) for DeFendAnts

in this action, at 277 PART AUR. N. 1. N. 4 10017

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Sworn to before me, this

2) day of APRIL

Notary Public, State of New No. 43-0132945

Qualified in Richmond County Commission Expires March 30, 1976